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IN THE SUPREME COURT OF THE UNITED STATES

_____ Term, 1974

NO. 73-1429

D. ARTHUR LOWE, THELMA G. LOWE, DAVID A. LOWE, and STELLA FERN LOWE,

Plaintiffs and Appellants,

vs.

UNION OIL COMPANY OF CALIFORNIA, a corporation; GULF OIL CORPORATION, a corporation; MOBIL OIL CORPORATION, a corporation; TEXACO, INC., a corporation; and UNITED STATES DEPARTMENT OF THE INTERIOR,

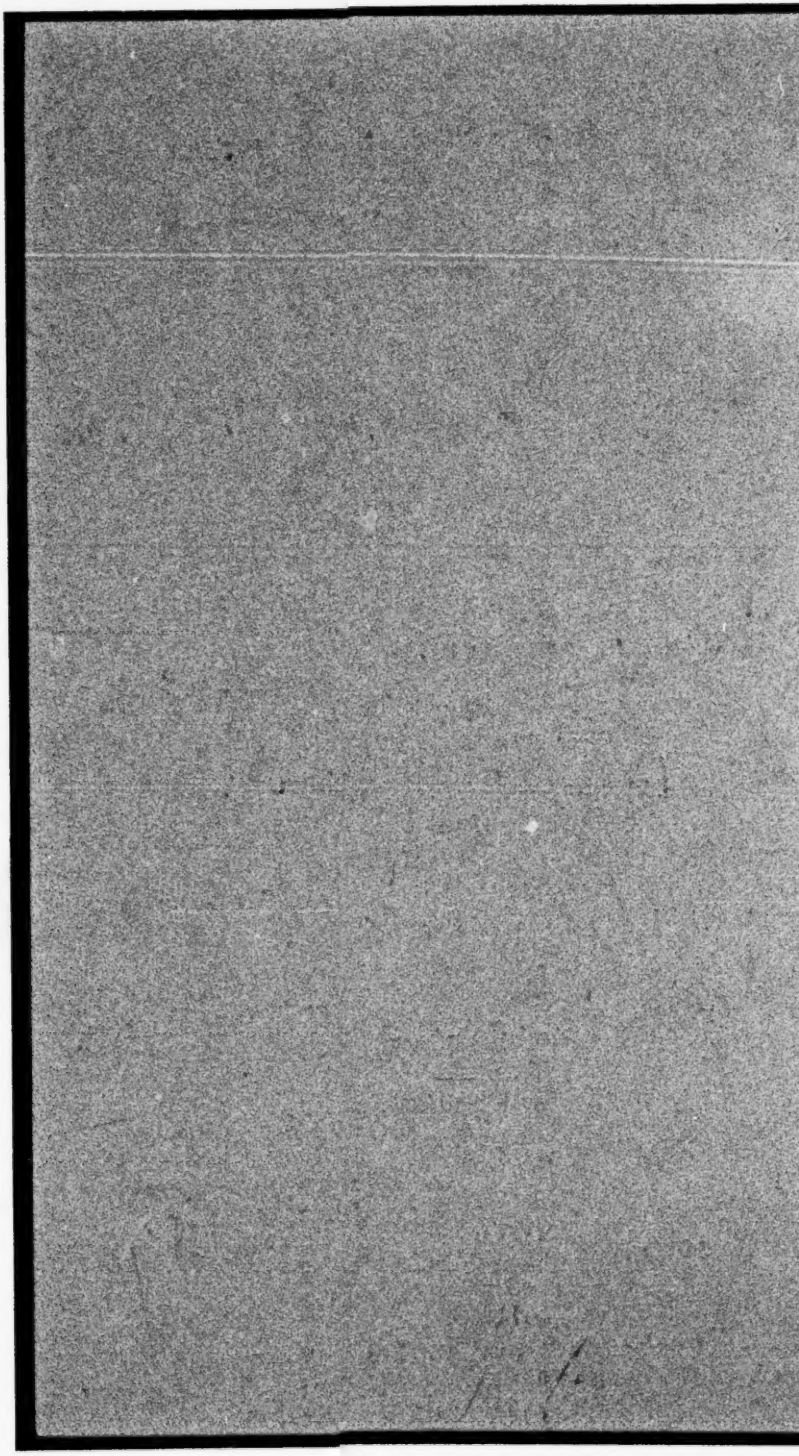
Defendants and Respondents.

Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

ROBERT E. KRAUSE
Counsel for
Petitioners.

Of Counsel.

WILLIAM C. BABCOCK
100 East Ocean Boulevard
910 Jergins Trust Building
Long Beach, California 90802



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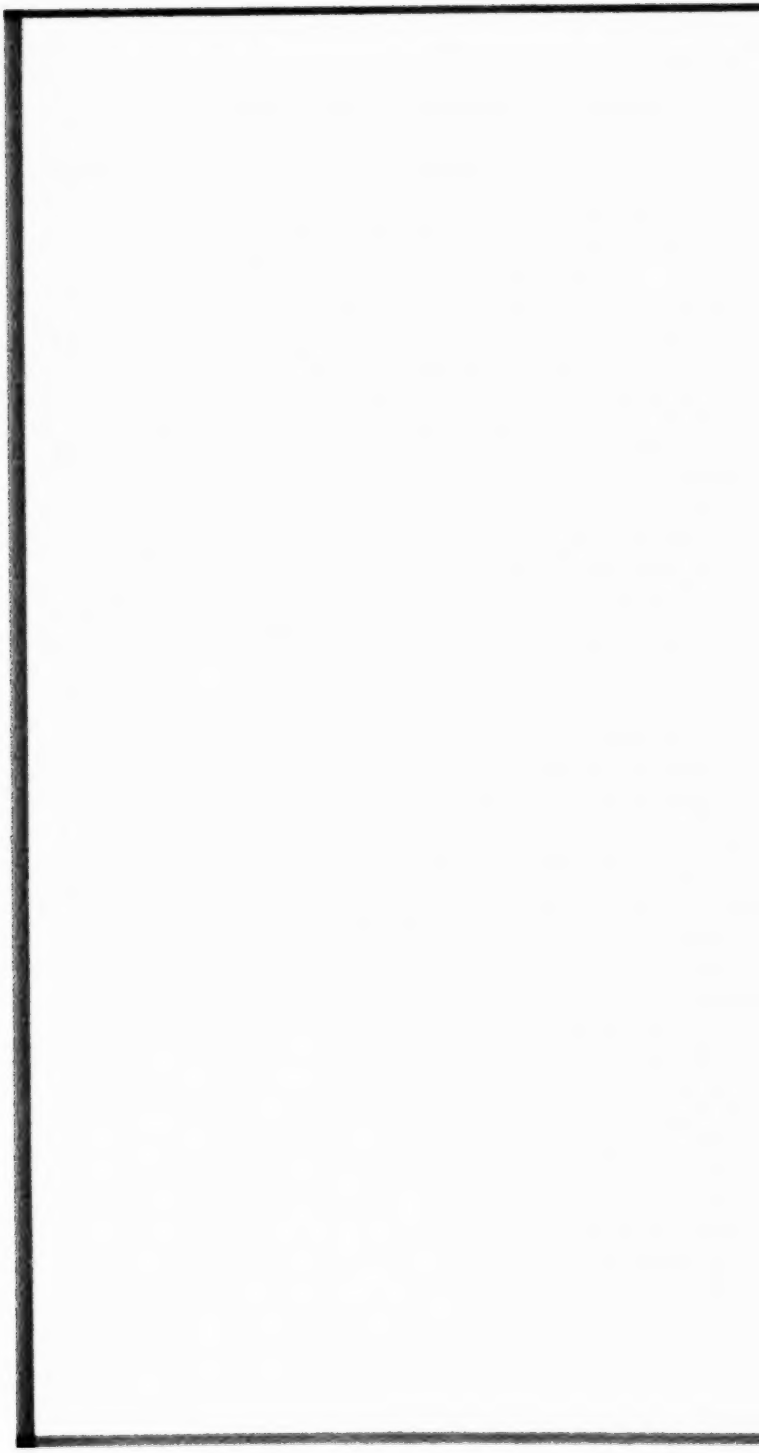

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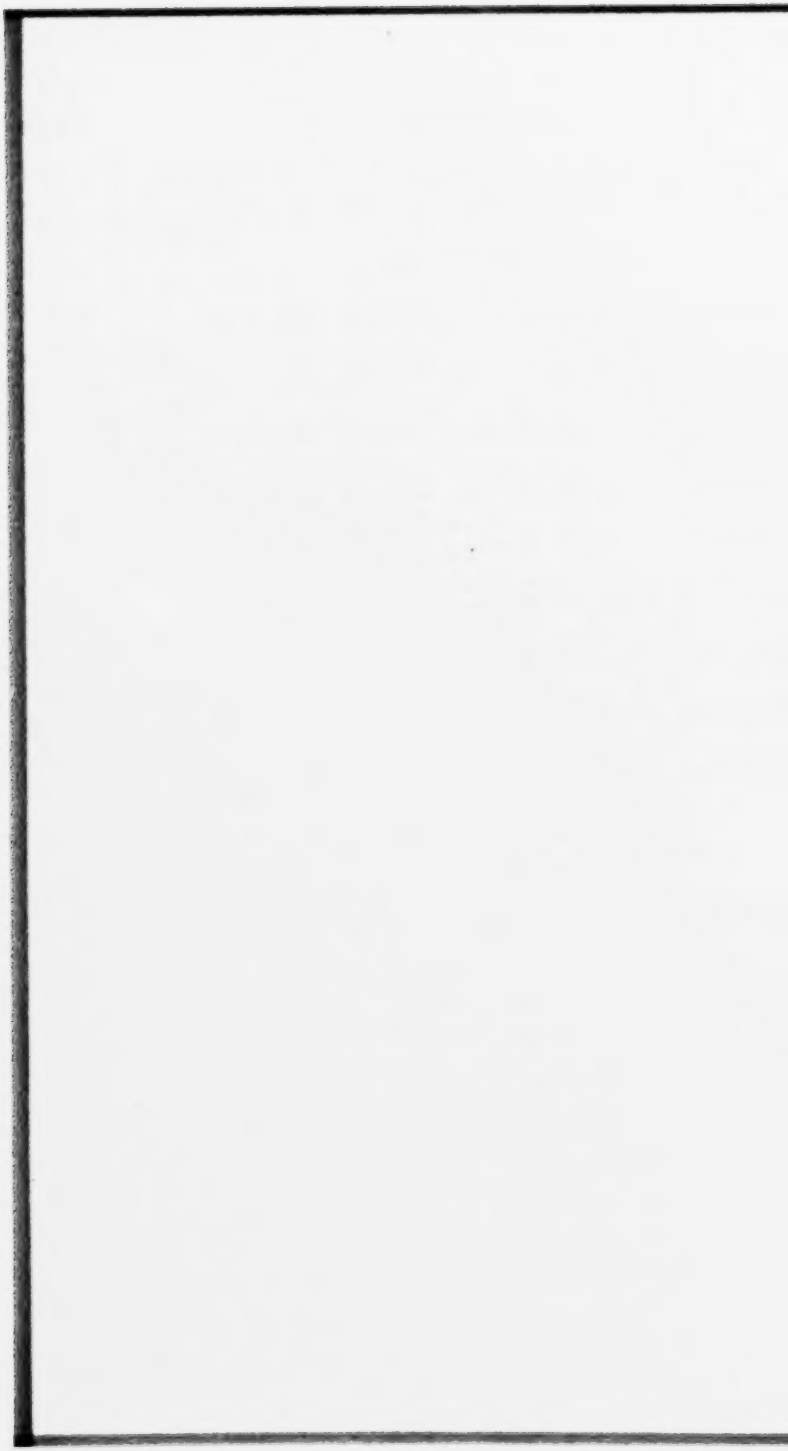

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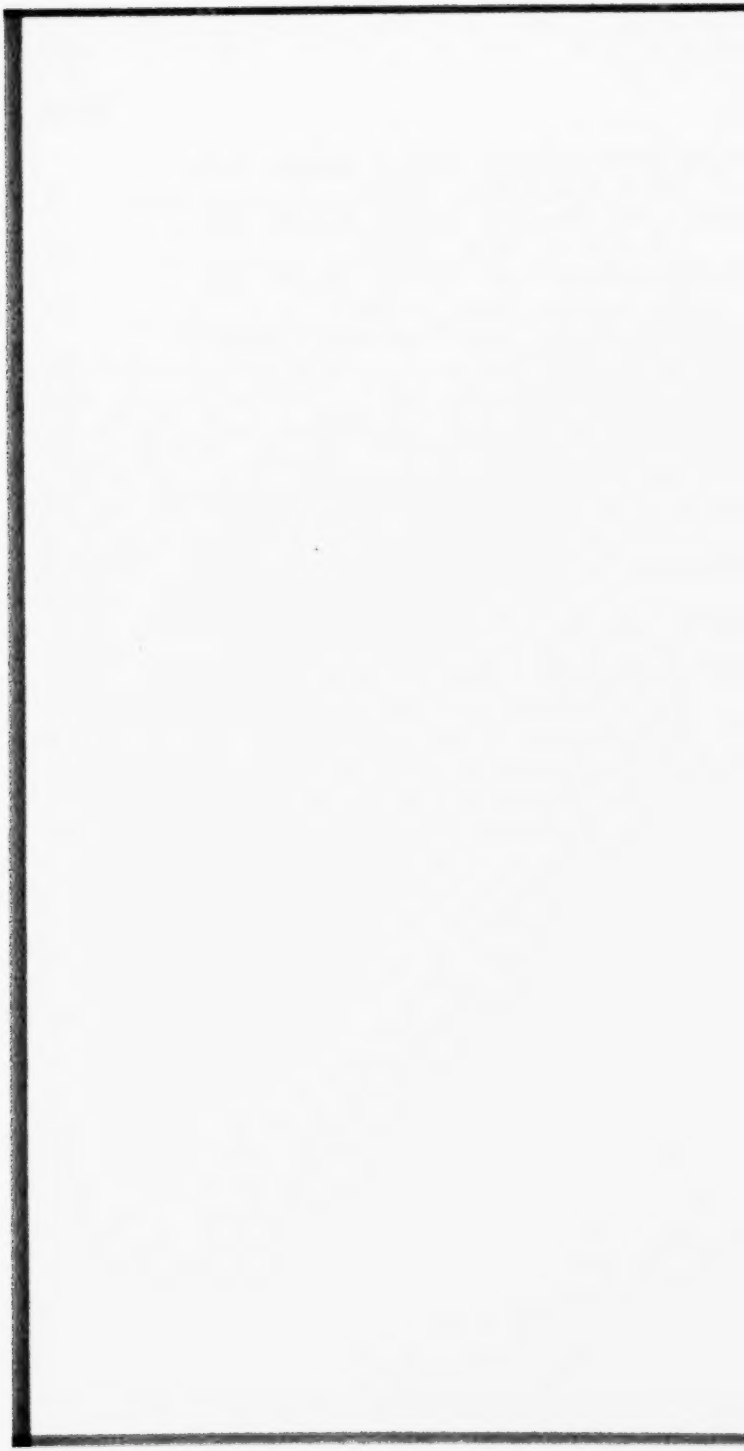

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NO.

D. ARTHUR LOWE, THELMA G. LOWE, DAVID A. LOWE, and STELLA FERN LOWE,

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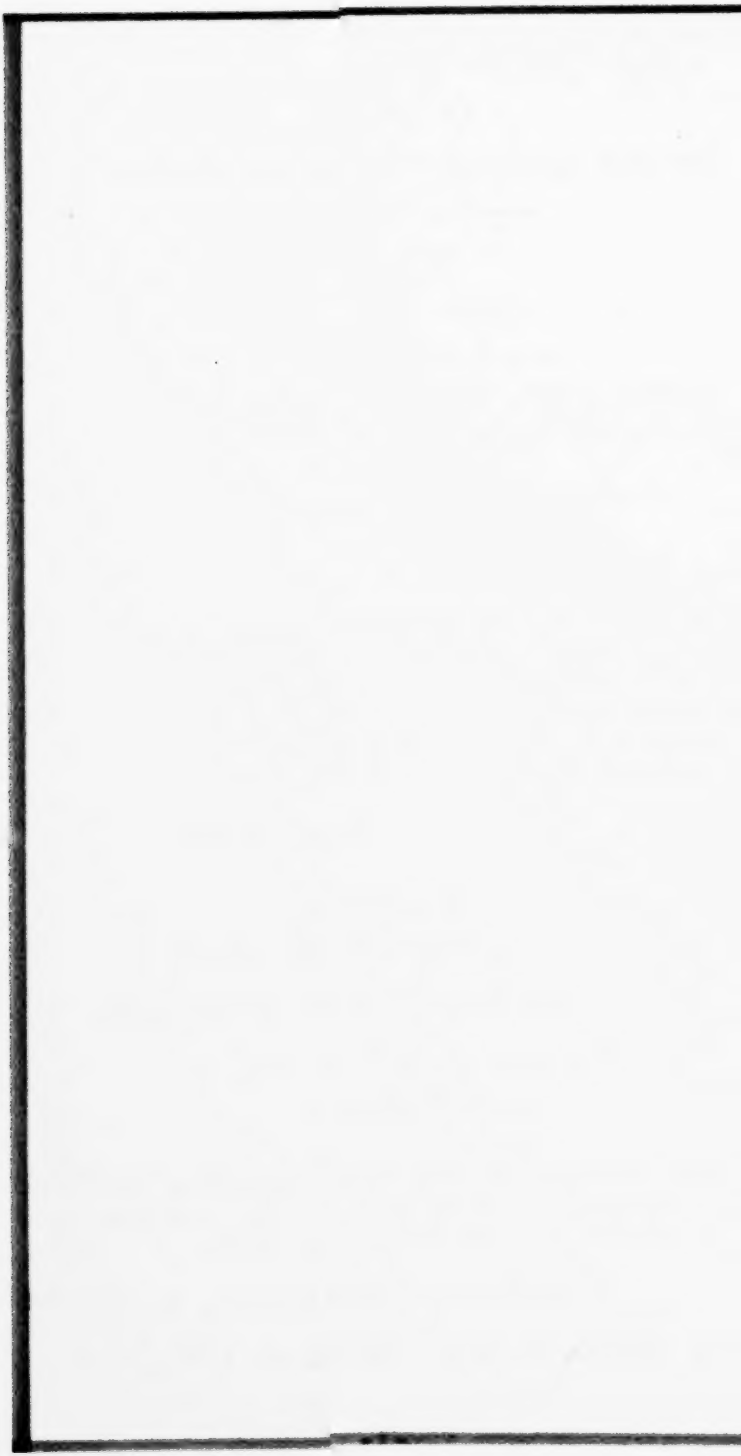
UNION OIL COMPANY OF CALIFORNIA, a corporation; GULF OIL CORPORATION, a corporation; MOBIL OIL CORPORATION, a corporation; TEXACO, INC., a corporation, and UNITED STATES DEPARTMENT OF THE INTERIOR,

Respondents.

Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Appellants-Petitioners, D. ARTHUR LOWE, THELMA G. LOWE, DAVID A. LOWE, and



STELLA FERN LOWE, respectfully petition this Court for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit to review the decision of that Court, filed November 15, 1973, in the above entitled cause. On November 28, 1973, the Honorable Circuit Judge Walter Ely dictated and granted a specific Order extending for cause, Appellants' time to file a Petition for Rehearing to December 14, 1973. A Petition for Rehearing, duly and regularly filed on December 10, 1973, was denied on December 26, 1973.

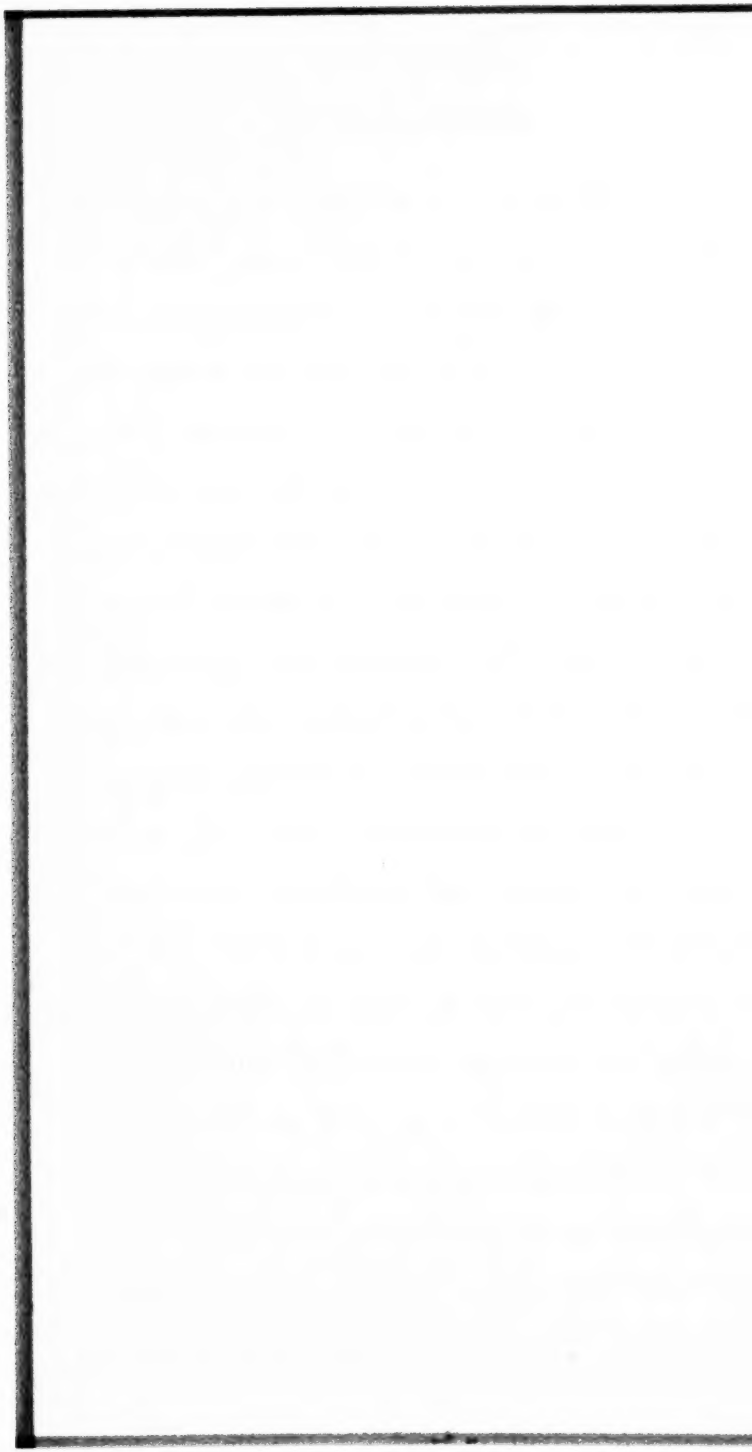
OPINIONS BELOW

The opinion of the United States District Court for the Southern District of California (Appendix A attached hereto) is not a reported decision.

The opinion of the Ninth Circuit Court of Appeals affirming the judgment of the District Court (Appendix B attached hereto) is reported at 487 Fed.2d. 477.

JURISDICTION

This is an action by Plaintiffs, above named, against Defendants, UNION OIL COMPANY OF CALIFORNIA, a corporation; GULF OIL CORPORATION, a corporation; MOBIL OIL CORPORATION, a corporation; TEXACO, INC., a corporation, on seven separate and distinct causes of action set forth in Plaintiffs' First Amended Complaint for Quiet Title to Mining Claims, for damages for trespass and conversion, waste of private oil and gas resources, devaluation of mining locations, and to eject trespassers. (Cl. T., p. 124 to 152 inclusive, and exhibits attached to Plaintiffs' Complaint, Cl. T., p. 153 to 194 inclusive, and p. 334 to 360 inclusive) Pursuant to written Stipulation signed by all parties (Cl. T., p. 218 to 220) the Court ordered and granted permission to Plaintiffs to file retroactively as of March 15, 1971, the First Amended Complaint. (Cl. T., p. 122) This order was filed on



March 15, 1971. On March 30, 1971, Plaintiffs filed notices of dismissal as to the United States, Department of Interior. Subsequently the United States and all other Defendants filed motions to dismiss the cause of action with prejudice or for summary judgment in answer to the Plaintiffs' First Amended Complaint. (4 Appendix B, p. 3)

Jurisdiction is conferred on this Court by 28 U.S.C. Section 1254 (1).

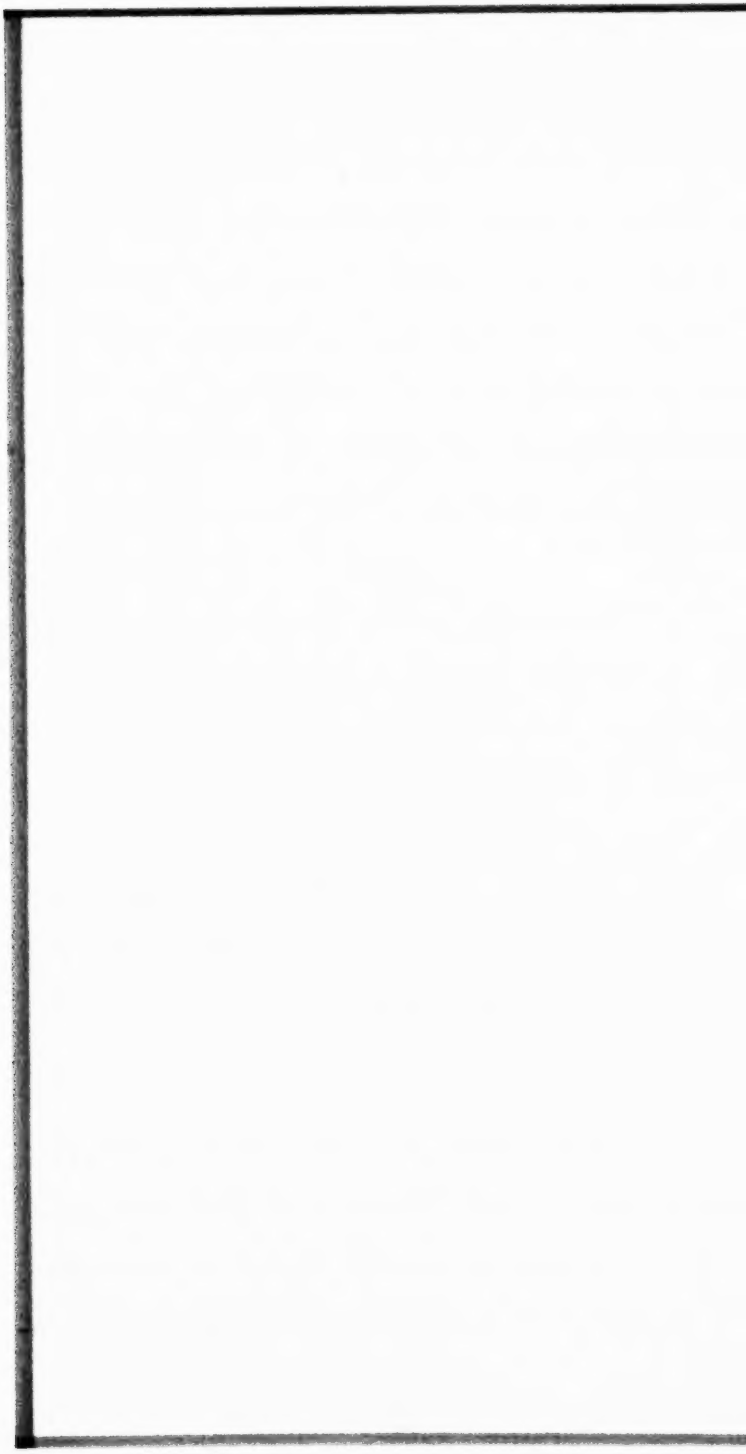
QUESTIONS PRESENTED

I

Was the District Court without jurisdiction to rule on the validity of Appellants' mining claims?

II

Were Appellants deprived of their vested property and property rights consisting of valid mining claims filed on subsequently acquired Federal land on the Outer Con-



tinental Shelf without due process?

III

Has the Ninth Circuit Court of Appeals decided important questions of Federal Law which have not been, but should be settled by this Court?

IV

Does the decision of the Ninth Circuit Court of Appeals conflict with the applicable decisions of this Court?

V

Has the Ninth Circuit Court of Appeals so far departed from the accepted and usual course of Judicial Proceedings, and sanctioned such a departure by a District Court, as to call for an exercise of this Court's power of supervision?

CONSTITUTIONAL PROVISIONS

Constitution of the United States, Fifth Amendment: "No person . . . shall be deprived of life, liberty or property with-

out due process of law, nor shall private property be taken for public use, without just compensation".

STATEMENT OF THE CASE

Appellants' perfected mining claims located on public lands of the United States (the Outer Continental Shelf) secured the exclusive right from the United States to remove minerals from said public lands underlying said claims.

On February 5, 1968, the Secretary of the Interior and Respondent oil companies, with actual and constructive knowledge of Appellants' mining claims, entered into oil and gas leases under which Respondent oil companies were granted ostensible rights to remove oil and gas (minerals) underlying Appellants' perfected mining claims. Respondent oil companies, since entering into said leases, have removed large quantities of oil, gas and other hydro-

carbon products from the Appellants' underlying mining claims without authority or consent of Appellants. (Cl. T., p. 139, lines 13 to 26)

By removing said oil, gas and other hydro-carbon products from land underlying Appellants' mining claims, Respondent oil companies have wrongfully taken from Appellants' perfected mining claims approximately One Million Two Hundred Eighty Thousand Dollars ($1,280,000.00), up to January 1, 1971, (Cl. T., p. 143, lines 7 to 15) all without due process of law. (Cl. T. p. 136, lines 26 to 32, p. 137, lines 3 to 30) Neither the United States Government or Respondent oil companies have reimbursed Appellants for said properties wrongfully taken, nor have they offered to do so.

In addition, Respondent oil companies have trespassed upon and across Appellants' mining locations (Cl. T., p. 134, line 25, p. 136, lines 15 to 32) (Cl. T., p.

142, lines 20 to 32, p. 143, lines 1 to 9)

The following more specifically details the status of Appellants' mining claims:

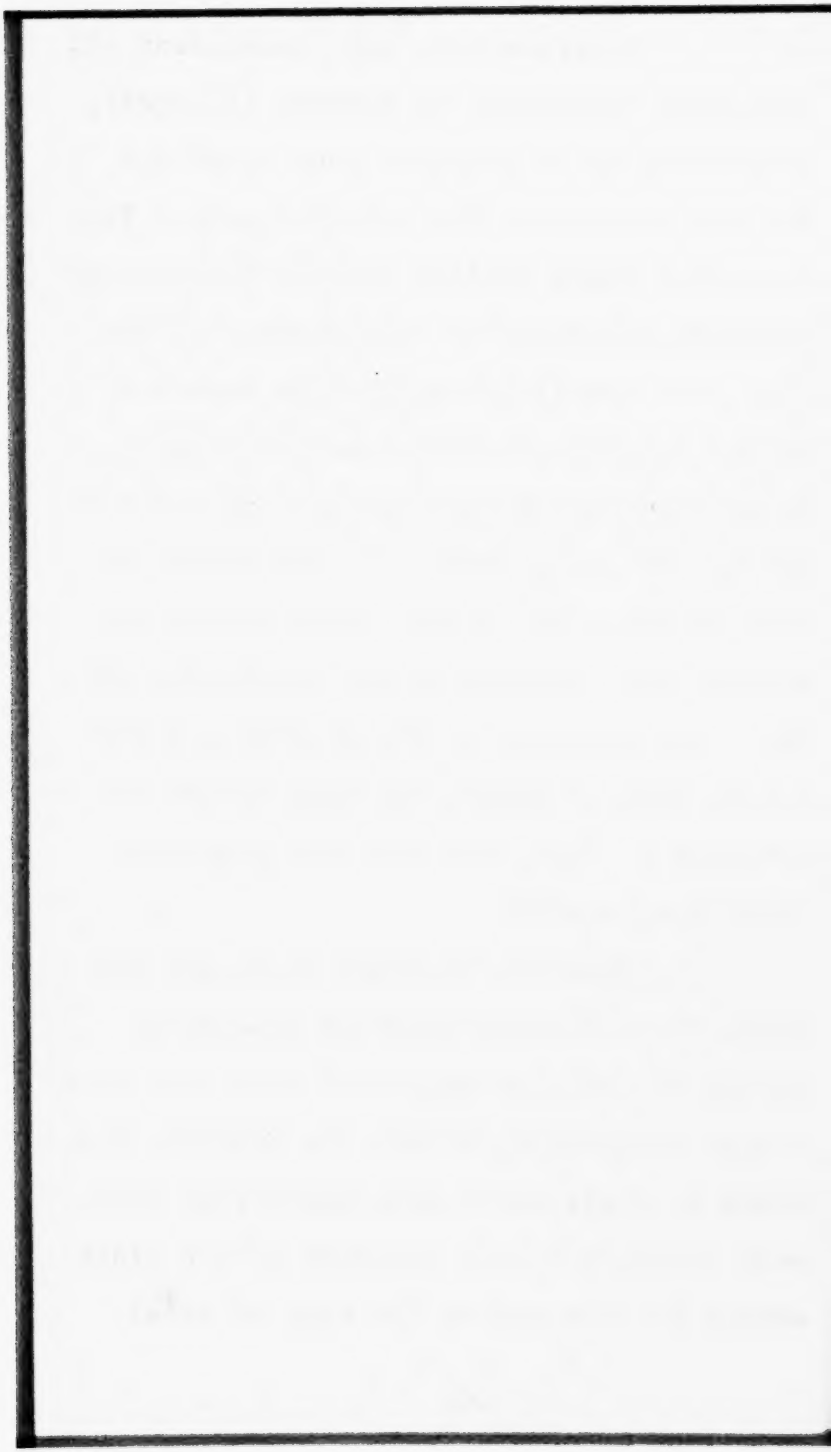
The public land, mineral in character, situated on the Outer Continental Shelf and belonging to the United States, upon which Appellants' petroleum placer mining claims are located was free and open to mineral entry under the General Mining Laws which had been extended to the Outer Continental Shelf by the Outer Continental Shelf Lands Act. (43 U.S.C. Section 1333 (a) (1))

Before Respondent oil companies entered into any oil and gas lease with the United States Government, each Respondent oil company had actual and constructive notice by recording of Appellants' filed mining claims, on a portion of Tract 402, Block 51 North, 65 West, as shown on the official Outer Continental Shelf Land Map 6-B. (Cl. T., p. 132, lines 5 to 13)

Subsequently, said Respondent oil companies introduced an exhibit (4 pages), purporting to be an exact copy of an oil and gas lease with the United States. This purported lease recites that it was entered into and effective as of February 1, 1968.

Appellants raised the question of the validity of this lease, in their brief opposing Defendants' motions for dismissal, on the grounds that the lease had been entered into several days before the sealed bids required by the requisites of the Outer Continental Shelf Lands Act (43 U.S.C. Section 1334), had been opened on February 5, 1968, and that the purported lease was invalid.

Both the District Court and the Ninth Circuit Court erred in apparently taking no judicial notice of this fact even though Respondent, TEXACO OIL COMPANY, did state in their Reply Memorandum that argument relative to the validity of the lease should be reserved to the time of trial.

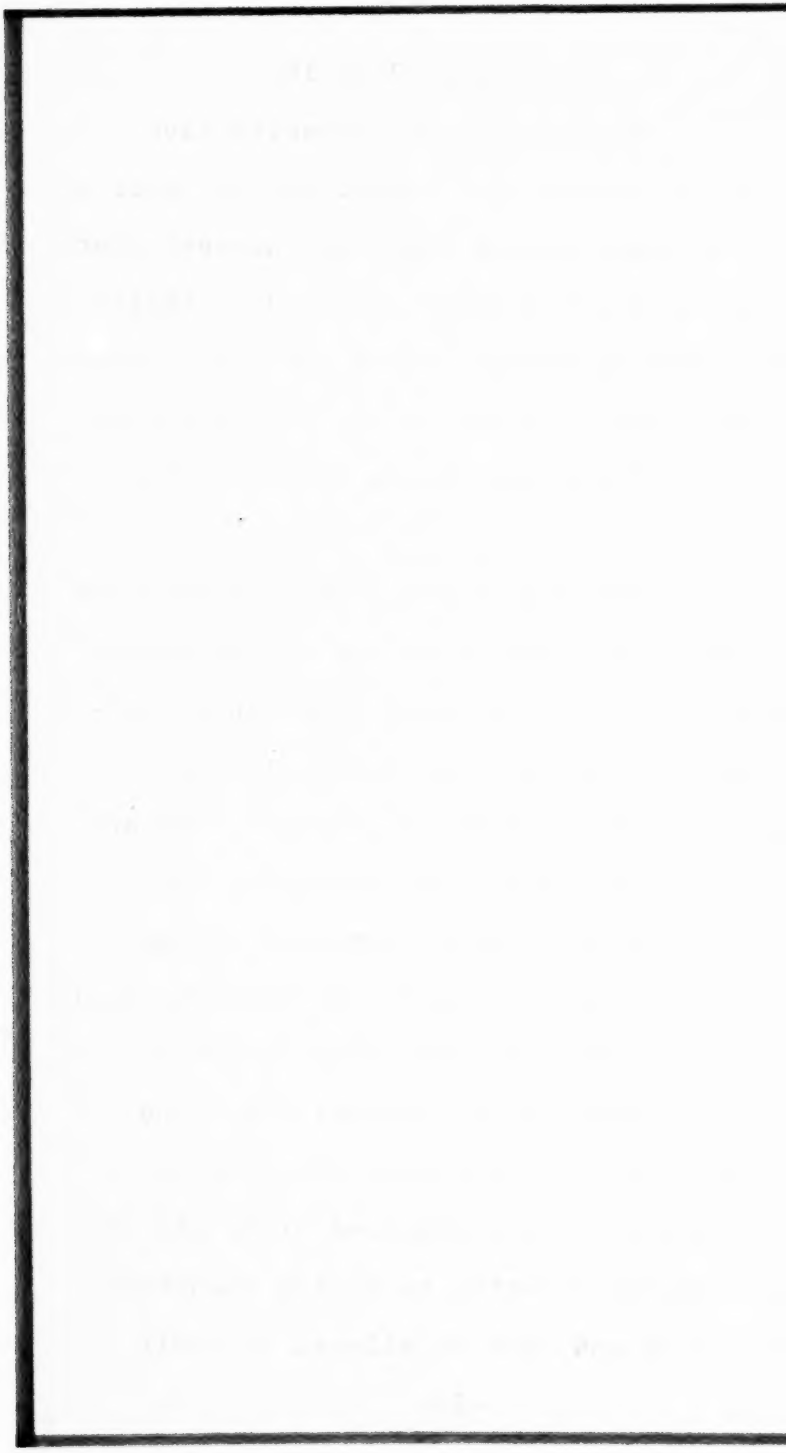


(Cl. T., p. 365, lines 13 to 18)

Respondent oil companies have failed to provide and submit any evidence of a valid lease giving them any interest whatsoever in the minerals contained in Appellants' mining claims, or in fact, any interest whatsoever in any of the minerals contained in Tract 402, Block 51 North, 65 West.

Respondent oil companies have not recorded their leases or any claims superimposed upon or overlying Appellants' perfected recorded mining claims, in Los Angeles or Santa Barbara counties, and are therefore estopped from contesting the validity of Appellants' recorded claims. That issue can be raised only between rival mining claimants for the same location.

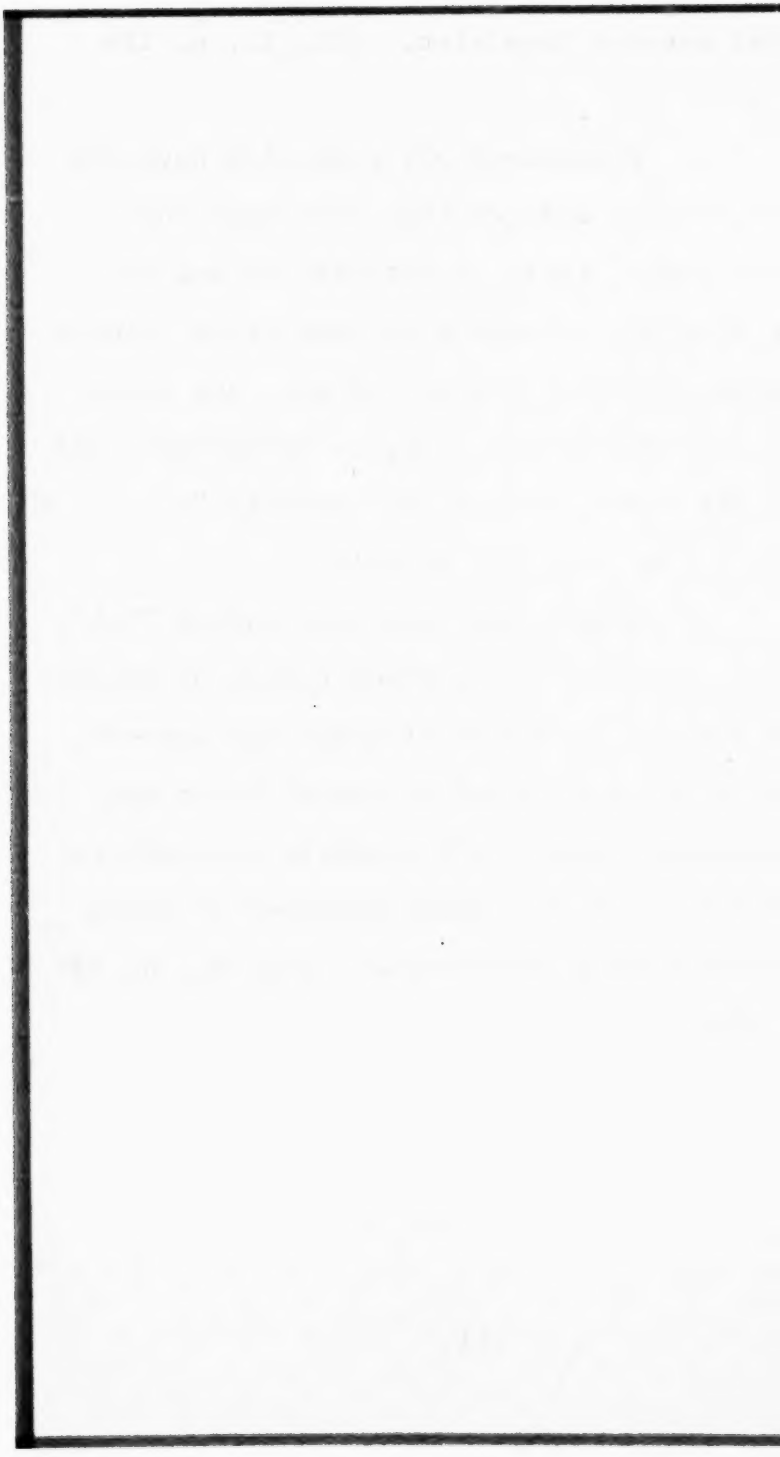
Appellants' mineral entry and mining locations were made pursuant to, and Plaintiffs have complied with, all of the statutes relating to mining locations and claims and have so alleged in their



First Amended Complaint. (Cl. T., p. 126 to 131)

Respondent oil companies have not specifically alleged that they have any legal right, title or interest in and to the minerals contained in Appellants' mining claims, but such claims, if any, are asserted, by implication only, in Defendants' oil and gas lease, Defendants' Exhibit "A". (Cl. T., p. 242, 287 to 291)

Appellants' Exhibits marked "D-1", et al, are true and correct copies of recorded notices of "Proof of Labor and Improvement Work" and "Proof of Annual Labor and Improvement Work", all properly recorded in the office of the County Recorder of Santa Barbara County, California. (Cl. T., p. 334 to 361)



REASONS RELIED ON FOR GRANTING OF WRIT.

I

THE DISTRICT COURT WAS WITHOUT JURISDICTION TO RULE ON THE VALIDITY OF APPELLANTS' MINING CLAIMS.

The Ninth Circuit Court exceeded its authority and encroached unconstitutionally upon the exclusive jurisdiction and power of the Secretary of the Interior, which rights pre-empt the Court's authority to rule on the validity of said mining claims without first having a determination made by the Secretary at an administrative hearing for that purpose, duly noticed and held.

While the United States District Courts have jurisdiction over cases involving rights to the natural resources of the subsoil and seabed of the Outer Continental Shelf (43 U.S.C. Section 1333 (b)), the determination of the validity of mining claims initiated under the General Mining Laws is the exclusive perogative and duty of the Secretary, and the Courts have so held.

Administrative Determinations.

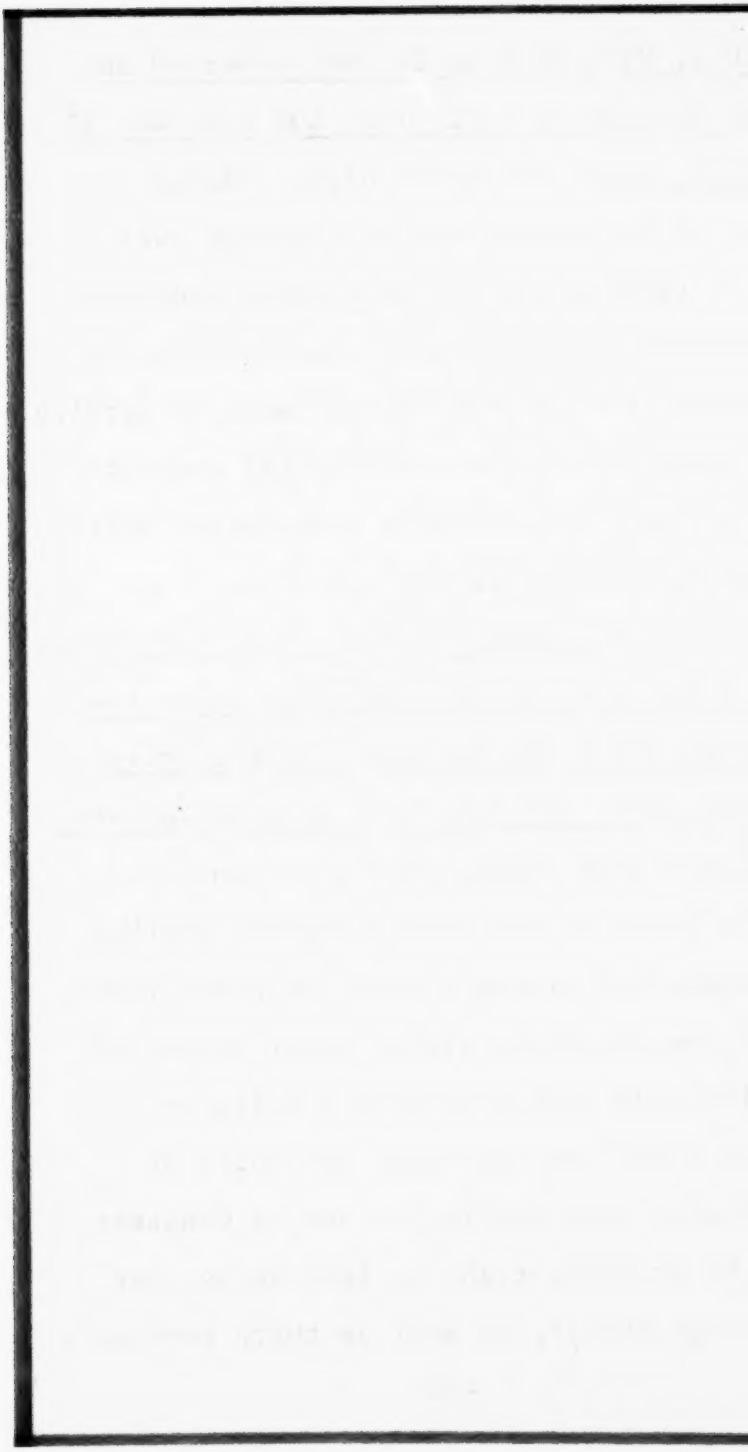
Best v. Humbolt Placer Mining Co., Cal. 1963, 83 S.Ct. 379, 371 U.S. 334, 9 L. Ed.2d. 350. "A mining claim on public land cannot be struck down arbitrarily, but so long as the legal title remains in the Government, it has the power, after proper notice and upon adequate hearing, to determine whether the claim is valid and, if it be found invalid, to declare it null and void."

In Palmer v. Dredge Corp., C.A. Nev. 1968, 398 F.2d. 791, Certiorari denied 89 S.Ct. 715, 393 U.S. 1066, 21 L.Ed.2d. 709; the Court held, "The Secretary of Interior is charged with seeing that valid mineral claims are recognized, invalid ones eliminated, and the rights of the public preserved".

In Oil Shale Corp. v. Udall, D.C. Colo. 1966, 261, F.Supp. 954, affirmed 406, F.2d. 759, Certiorari granted 90 S.Ct. 77,

396 U.S. 817, 24 L.Ed.2d. 68, reversed on other grounds 91 S.Ct. 196, 400 U.S. 48, 27 L.Ed.2d. 193; the Court held, "Broad power of the Department of Interior over public lands gives the Department undisputed jurisdiction over most aspects relating to validity of mining claims, such as marking of claims, discovery, and mineral character of the land, particularly when patent application has been filed".

In Coleman v. U.S., C.A. Cal. 1966, 363 F.2d. 190, opinion adheared to on rehearing, 379 F.2d. 555 Certiorari granted 88 S.Ct. 476, 389 U.S. 970, 18 L.Ed.2d. 460; the Court held, "Qualified entryman on public lands of the United States, whether as locator of mining claims, as homesteader, or as one asserting rights under others of multifarious laws governing entries on public lands, who perfects his entry by compliance with applicable Act of Congress, thereby acquires right to land as against sovereign itself, as well as third persons".

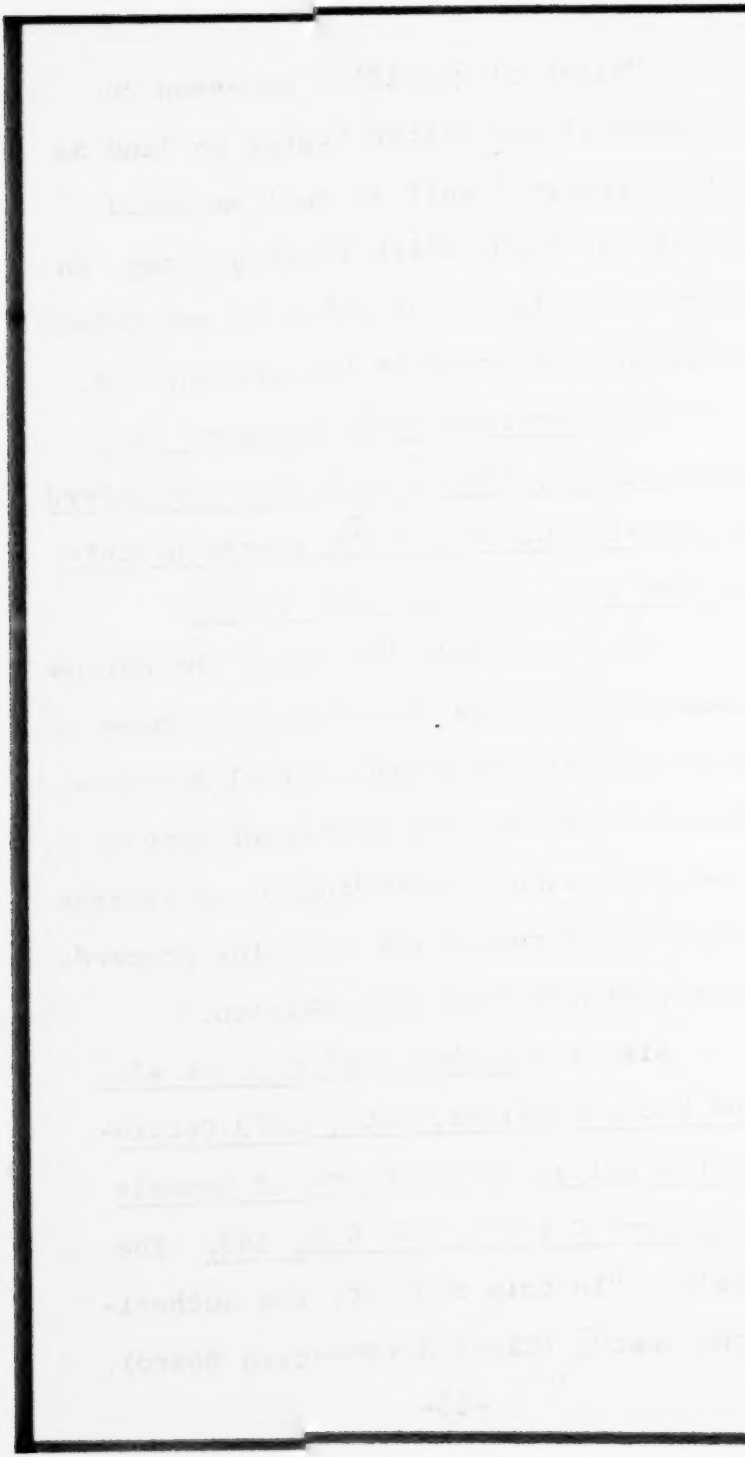


"Right of qualified entryman on public lands of the United States to land as against sovereign itself as well as third persons is not right which Secretary may, in his discretion, ignore or which he may reject in the absence of fraud or imposition." Id.

Pan American World Airways, Inc. v. United States, 1963 Appeal from the United States District Court for the Southern District of New York, 371 U.S. 296 (1963).

The Court held "We think the narrow questions presented by this Complaint have been entrusted to the board, (Civil Aeronautics Board), and that the Complaint should have been dismissed. Accordingly, we reverse the judgment and remand the case for proceedings in conformity with this opinion."

Also see Hughes Tool Co., et al., v. Trans World Airlines, Inc., 1973 Certiorari to the United States Court of Appeals for the Second Circuit, 409 U.S. 363. The Court held, "In this context, the authority of the board, (Civil Aeronautics Board),



to grant the power to 'control' and to investigate and alter the manner in which that 'control' is exercised leads us to conclude that this phase of CAB jurisdiction, like the one in the Pan American case, pre-empts the antitrust field". -Reversed.

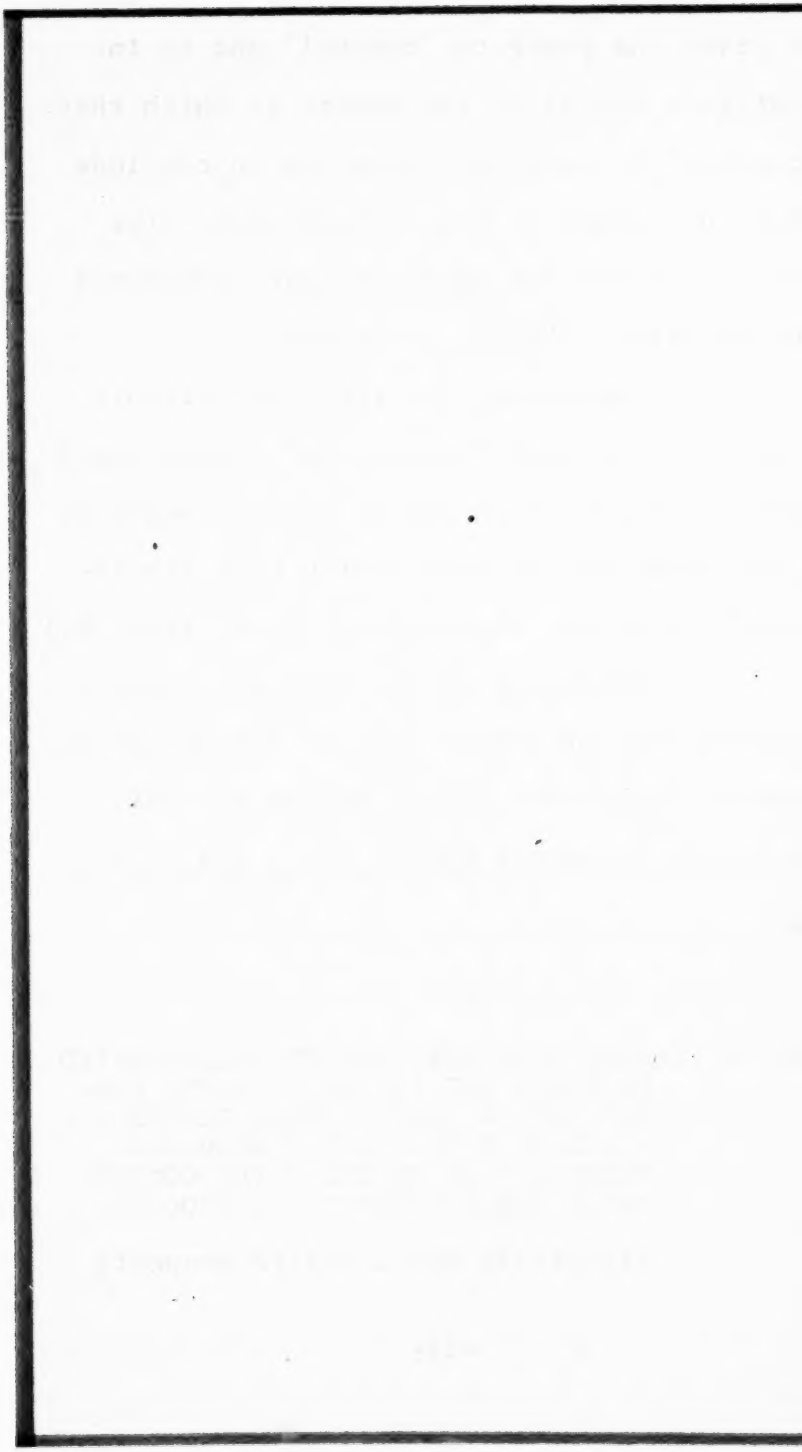
Therefore, for the Ninth Circuit Court to hold that "Appellants' claims based upon their purported placer mining locations filed under the General Mining Laws are invalid" is error. (Appendix B, p. 4, line 18.)

Questions of the District Court's jurisdiction of action must be determined on appeal, though not raised by the parties. Mantin v. Broadcast Music, Inc., 224 F.2d. 204.

II

THE APPELLANTS WERE DEPRIVED OF THEIR VESTED PROPERTY AND PROPERTY RIGHTS CONSISTING OF VALID MINING CLAIMS FILED ON SUBSEQUENTLY ACQUIRED FEDERAL LAND ON THE OUTER CONTINENTAL SHELF WITHOUT DUE PROCESS.

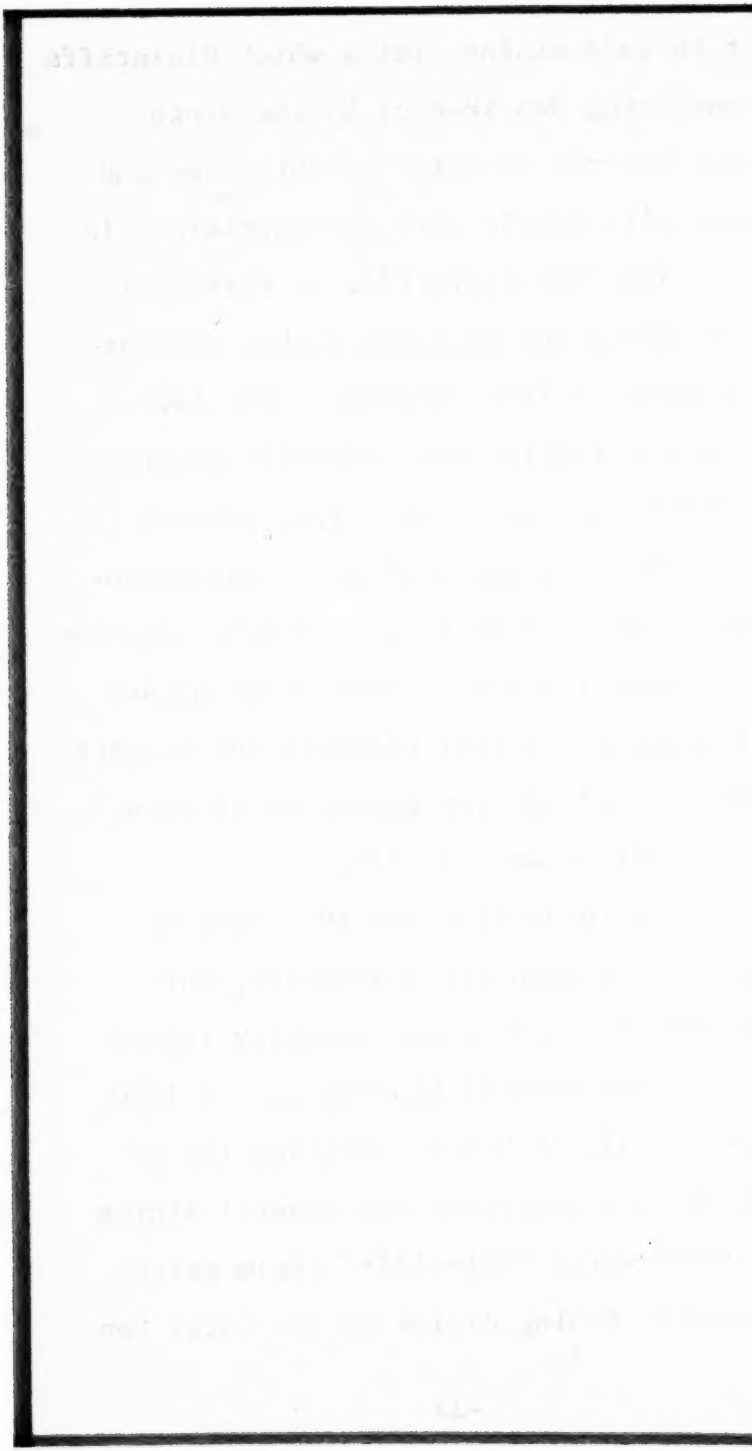
Plaintiffs had a vested property



right in said mining claims which Plaintiffs are now being deprived of by the Ninth Circuit Court's decision of this case and respectfully submit that this decision, in effect, deprives Plaintiffs of their valuable property and property rights without due process of law. Reasons: The 1920 Leasing Act specifically exempted after acquired Federal Land. 30 U.S.C. Section 181, et seq. By Congressional Act (Outer Continental Shelf Lands Act, 43 U.S.C., Section 1331 through 1343) said land first became after acquired Federal property and subject to the express written exception in said Mineral Leasing Act of 1920.

No provision was ever made by Congress to compensate Plaintiffs, for their vested property and property rights.

The Mineral Leasing Act of 1920 (41 Stat. 437, 30 U.S.C., Section 181 et seq.) did not supercede the General Mining Laws under which Plaintiffs' claim petroleum placer mining claims on the Outer Con-



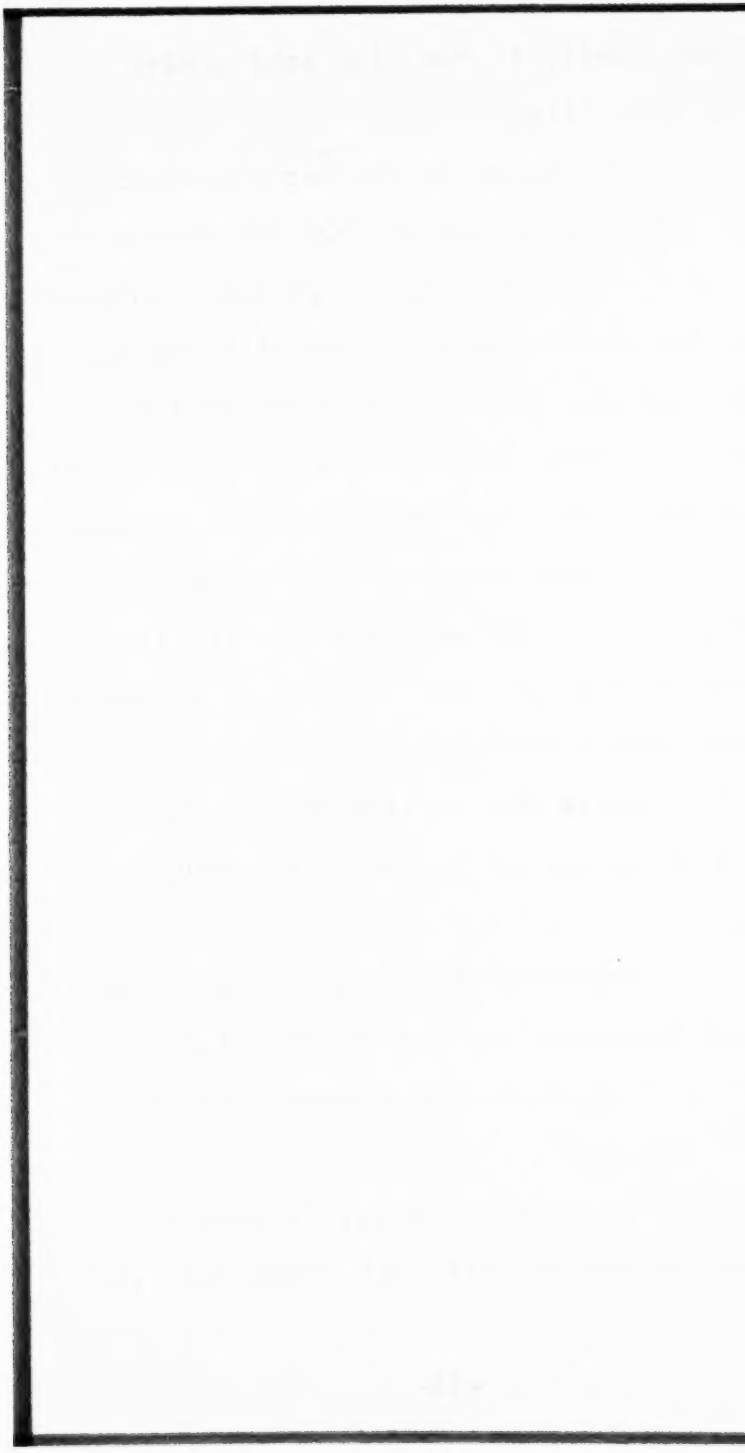
tinental Shelf, at the time said mining claims were filed.

The issue is whether the Mineral Lands and Leasing Act of 1920 (41 Statutes 437, 30 U.S.C., Section 181 et seq.) superceded the General Mining Laws with respect to oil and gas on the Outer Continental Shelf. In order to determine this issue, it is necessary to consider only three things; namely, (1) the purpose of the Mineral Leasing Act of 1920 as amended, (2) lands subject to the act; and (3) lands to which the act does not apply.

Title 30, Section 181 of the Mineral Leasing Act of February 25, 1920, reads:

"Section 181 entitled 'Land Subject to Disposition; Persons Entitled to Benefits; Reciprocal Privileges; Helium Rights Reserved".

"Deposits of Coal, Phosphate, Sodium, Potassium, Oil, Oil Shale, Native

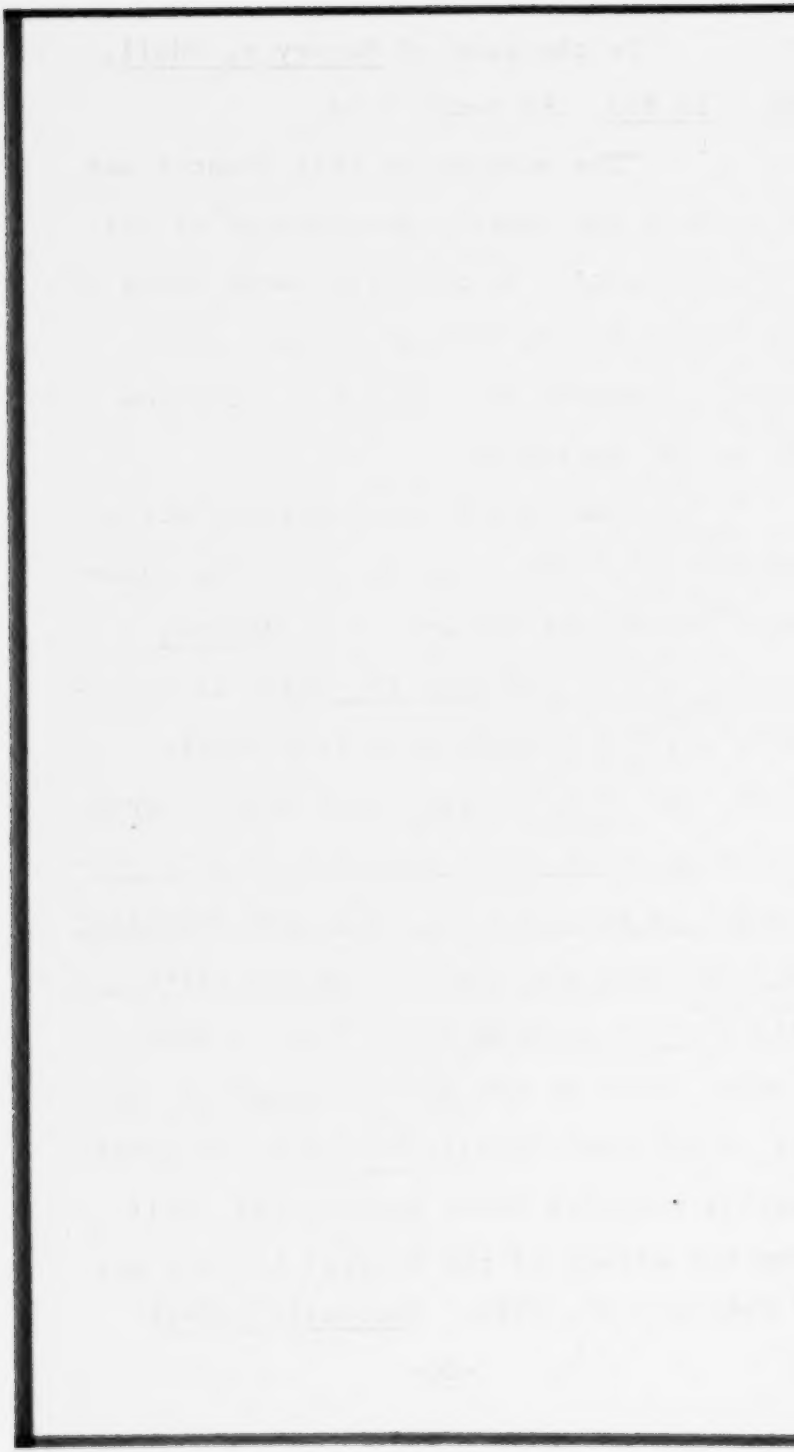


Asphalt, . . . (including petroleum impregnated rock, sands from which oil is recoverable only by special treatment after the deposit is mined or quarried)" or gas or lands containing such deposits owned by the United States, including those in the National Forests, but excluding lands acquired under the Appalachian Forest Act, and those in incorporated cities, towns, and villages, and in National Parks and Monuments, those acquired under those acts subsequent to February 25, 1920, and lands within the Naval Petroleum & Oil Shale Reserves, except as herein provided, shall be subject to disposition in the form and manner as provided by (30 U.S.C.) Sections 181 to 184, 185 to 188, 189 to 192, 193, 194, 201, 202 to 209, 211 to 214, 223, 224-226, 226-2, 227 to 229 a, 241, 261 to 263, of this Title, to citizens of the United States . . . "(Emphasis Added) (Cl. T., p. 302)

In the case of Harvey v. Udall, 384 F.2d.883, the Court held:

"The purpose of this Chapter was to promote the orderly development of oil and gas deposits in publicly owned lands of the United States through private enterprise." Chapter 3A - 30 U.S.C., Section 181 to 287 inclusive.

Under the Mineral Leasing Act of February 25, 1920, together with the subsequent amendments thereto, said Mineral Leasing Act of February 25, 1920, is applicable only to certain specified public lands, and that certain other public lands, including other lands acquired by Acts subsequent to February 25, 1920, are expressly excluded from the application and effect of said Mineral Leasing Act. This is made crystal clear by the very language of the act, which specifically excludes the subsequently acquired Outer Continental Shelf from the effect of the Mineral Leasing Act of February 25, 1920. (Emphasis Added)



The natural resources of the sub-soil and seabed of the Outer Continental Shelf was declared by Presidential Proclamation No. 9683 (not an Act) made in September 28, 1945, by the Honorable Harry S. Truman, to appertain to the United States as follows:

"No. 9683, 10 F.R. 12305, reserving and placing certain resources of the Continental Shelf under the control and jurisdiction of the Secretary of the Interior.

By virtue of and pursuant to the authority invested in me as President of the United States, it is ordered that the natural resources of the sub-soil and seabed of the Continental Shelf beneath the high seas, but contiguous to the coast of the United States, be declared this day by proclamation to appertain to the United States, and to be subject to its jurisdiction and control and be and they are hereby reserved, set aside, and placed under the jurisdiction and control of the Secretary of the Interior for

administrative purposes, pending the enactment of legislation in regard thereto. Neither this Order nor the aforesaid Proclamation shall be deemed to affect the determination by legislation or judicial decree of any issues between the United States and the several states, relating to the ownership or control of the sub-soil and seabed of the Continental Shelf within or outside of the three mile limit. HARRY S. TRUMAN". (Emphasis Added.)

The Amendment of August 8, 1946, commonly referred to as the 1946 Amendment to the Mineral Leasing Act of February 25, 1920, excluded and exempted from the application and effect of said Mineral Leasing Act of 1920, certain public lands and among those so excluded were lands acquired by other acts subsequent to February 25, 1920. (Emphasis Added)

Subsequently, on January 16, 1953 the Presidential Proclamation No. 10426 (18 F.R. 405) President Truman set aside the

submerged lands of the Continental Shelf as a Naval Petroleum Reserve. This, likewise, comes within the exception under 30 U.S.C. Section 181, as lands acquired subsequent to February 25, 1920. (Emphasis Added)

Section 13 of the Outer Continental Shelf Lands Act, Public Law 212-83rd Congress, Chapter 345, First Session, Section 13, reads as follows:

". . . Sec. 13 Naval Petroluem Reserve Executive Order repealed--Executive Order Numbered 10426, dated January 16, 1953, entitled 'Setting Aside Submerged Lands of the Continental Shelf As a Naval Petroleum Reserve'is hereby revoked."

Thus by the enactment of this Section 13 of the Outer Continental Shelf Lands Act of August 7, 1953, the public lands and the Outer Continental Shelf, became free and open to mineral entry.

Title 43, Code of Federal Regulations, Chapter II, Bureau of Land Management

Section 3101.2-1, entitled, "Lands to Which the Act (Mineral Leasing Act of February 25, 1920) does not apply, is clearly set forth as follows:

"Sec. 3102.2-1 Lands to Which the Act Does Not Apply

(a) acquired for the development of the mineral deposits

(b) acquired by foreclosure, or otherwise for resale

(c) reported as surplus under the Surplus Property Act of October 3, 1944 (58 Stat. 765; 50 U.S.C. 1611, et seq.)

(d) in incorporated cities, towns and villages

(e) in National Parks and Monuments

(f) set apart for military or naval purposes, including lands within Naval Petroleum and Oil Shale Reserves, or

(g) which are tidelands, submerged coastal lands, within the Continental Shelf, adjacent to or littoral to any part of land within the jurisdiction of the United States."

(Emphasis Added)

Particular attention is called to sub-paragraph (g) above, which refers to land on the Outer Continental Shelf, all of which were acquired subsequent to February 25, 1920. (Emphasis Added)

The Mineral Leasing Act of February 25, 1920, together with all the Amendments thereto, make absolutely no mention or reference to repeal or supercedence of the General Mining Laws. It simply provides for the disposition of certain resources by leasing instead of by complete alienation; that this new policy pertains to only certain resources in specified lands, and excludes the application and operation of said Mineral Leasing Act of February 25, 1920, together with all Amendments thereto, and to other public lands, as well as those acquired subsequent to February 25, 1920. (Emphasis Added.

The Outer Continental Shelf was

acquired subsequent to February 25, 1920, and therefore is exempt and excluded by the 1946 Amendment thereto, from the operation and effect of the Mineral Leasing Act of February 25, 1920, together with all of the Amendment thereto.

Therefore, 30 U.S.C., Section 181, et seq., does not supercede the General Mining Laws with respect to the oil and gas resources in the Outer Continental Shelf. (Emphasis Added)

North American Transportation and Trading Co., v. U.S., 1918, 53 Ct.Cl. 424, affirmed 40 S.Ct. 518, 253 U.S. 330, 64 L. Ed. 935. "A valid location, though unpatented, is a grant in the nature of an estate in fee and if such an estate is taken by the United States just compensation must be made therefor under U.S.C.A. Const. Amend., 5."

The Fifth Amendment to the United States Constitution specifically provides: "No person . . . shall be deprived of life,

liberty or property without due process of law, nor shall private property be taken for public use, without just compensation. This due process clause has been interpreted as a limitation on the legislative as well as the judicial and executive branches of the Government, thus preventing arbitrary and unreasonable legislation. This aspect of the subject is known as substantive due process, to distinguish it from procedural due process.

Vol. 3, Summary of California Law by Witkin, Pages 1901 and 1902.

Trans-Oceanic Oil Corp. v. Santa Barbara (1948, 85 C.A.2d. 776, 194 P.2d. 148.

Bolling v. Sharpe, 347 U.S. 497, 499.

Appellants' placer mining claims rest on a statutory grant from the United States and are valid as a matter of law.

The said placer mining claims are superior to the purported oil and gas lease, if any, claimed by the Respondent.

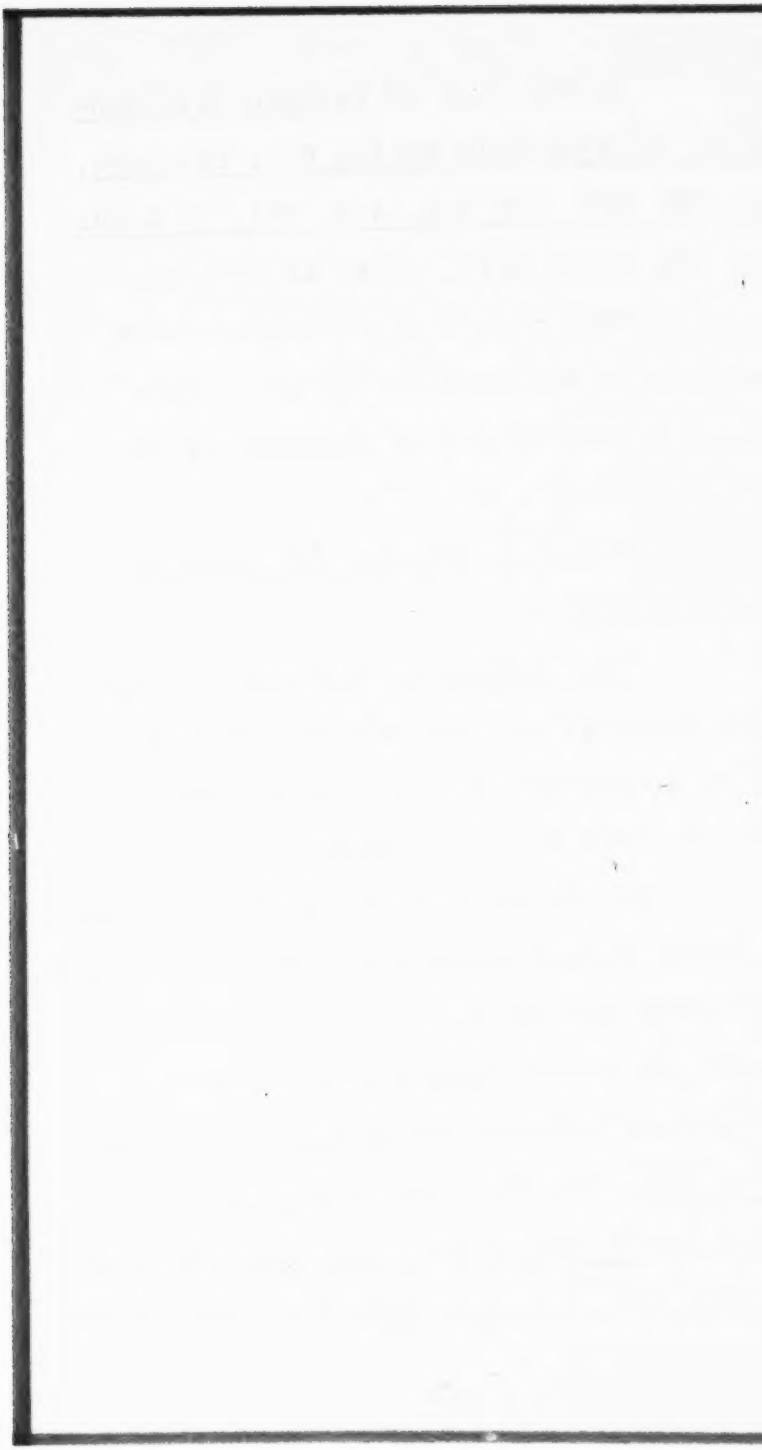
In the case of Calhoun Gold Mining Co. v. Ajax Gold Mining Co., Colorado, 1901, CP. 885, 182 U.S. 499, 501, 45 L.Ed. 1200, the Court held, cited as follows:

"The rights of a locator under this section are superior to any rights granted by the following sections of this title."

30 U.S.C. Section 22, Mineral Lands & Mining.

"The following sections of this title, referred to, include all laws relating to government mineral leases issued under the 1920 Mineral Leasing Act."

It therefore follows that oil and gas leases issued under the Outer Continental Shelf Lands Act carried no more weight than oil and gas leases issued under Mineral Leasing Laws pursuant to 30 U.S.C. Section 181, et seq. In the case of Oscamp v. Crystal River Mining Co., Colorado 1893, 88 Fed. 293, 296, 7 C.C.A. 233; the Court held:



"Under this chapter the title to a mining claim does not rest entirely on possession, but it rests upon a statutory grant."

Chapter 2, Tit. 30. U.S.C.

In the case of Mason v. Washington - Butte, Min. Co., Mont. 1914, 214 Fed. 32, 130 C.C.A. 426; the Court held, cited as follows:

"The mining laws do not require a locator in possession to purchase the land from the Government, and if he complies with the law relating to possessory rights, his title is as good as if secured by a patent." (Emphasis Added)

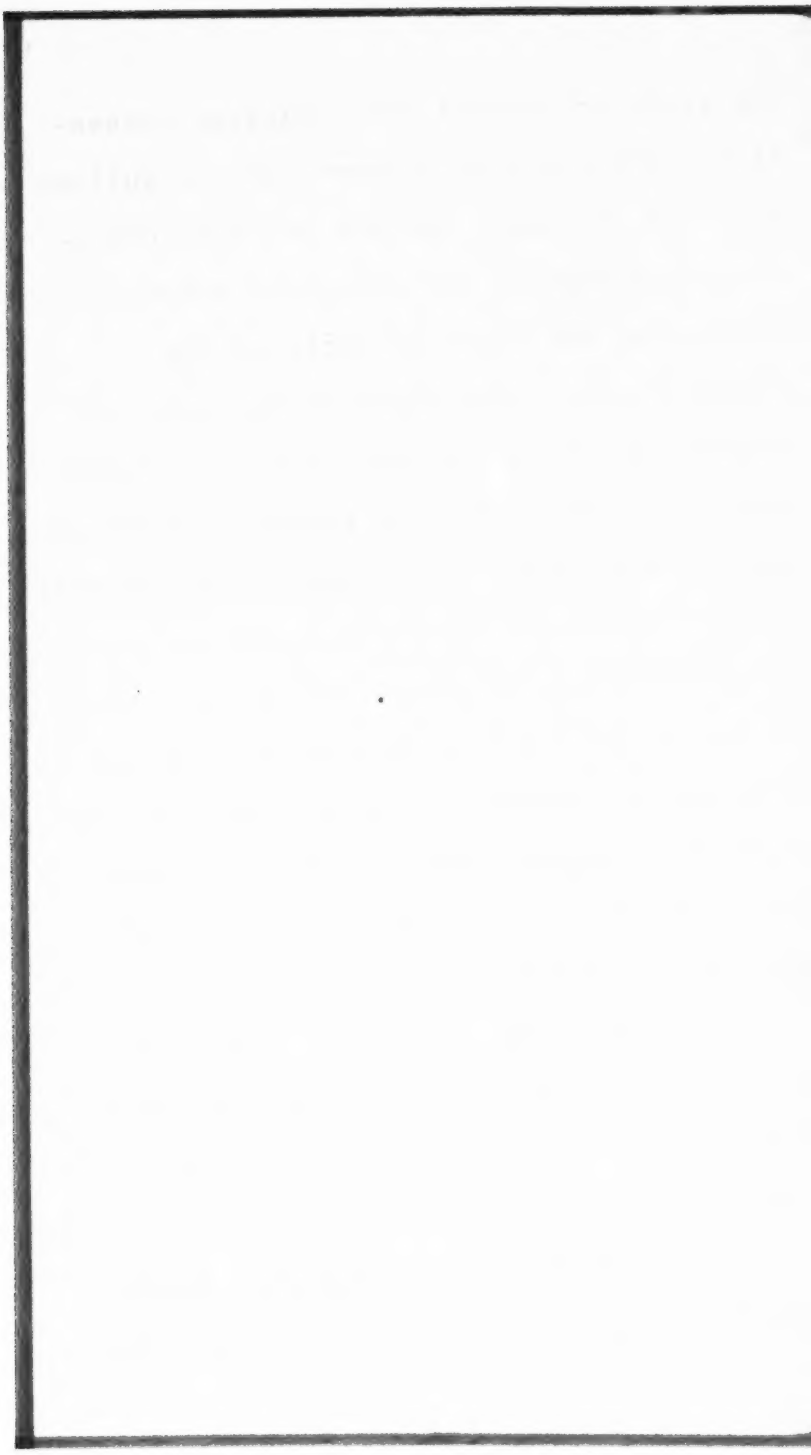
In the case of Wilber v. U.S. ex rel Krushnic, 1930, 50 S.Ct. 103, 280 U.S. 306, 74 L.Ed. 445, modifying 30 F.2d. 742, 58 D.C. 352, the Court held:

"When the location of a mining claim is perfected under law, it has the effect of a grant by the United States of

the right of present and exclusive possession. The claim is property in the fullest sence of the term; and may be sold, transferred, mortgaged and inherited without infringing any right or title of the United States. The right of the owner is taxable by the State; and is real property subject to the lien of a judgment recovered against the owner, in a State or territorial court. The owner is not required to purchase the claim or secure patent from the United States; but so long as he complies with the provisions of the mining laws, his possessory rights, for all practical purposes or ownership, is as good as though secured by patent."

"Drilling for oil on Federal domain is regarded as a placer mining operation governed by Federal Laws applicable thereto."

Standard Pipe and Supply Co. v. Red Rock Co., 1943, 135 P.2d. 659, 57 Cal.



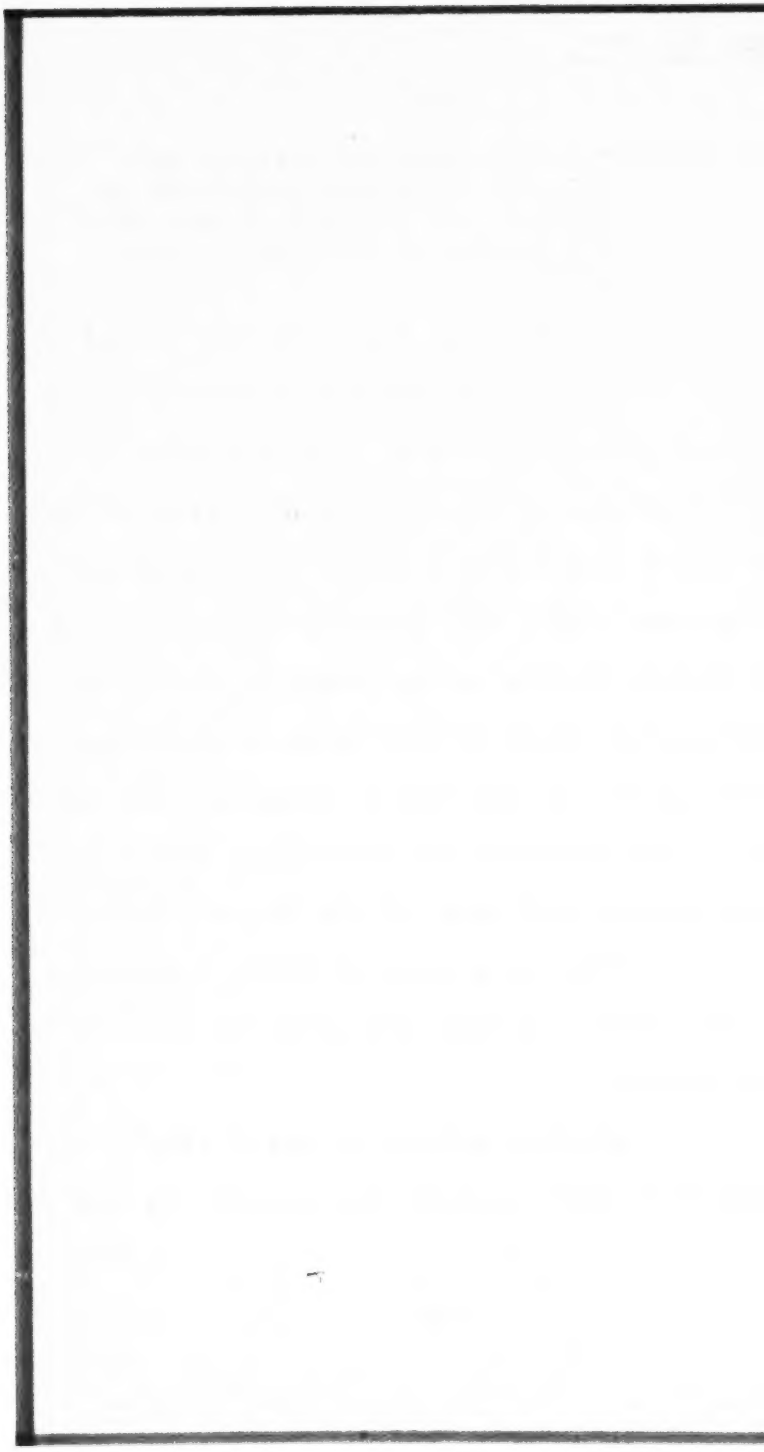
III

THE NINTH CIRCUIT COURT OF APPEALS HAS DECIDED IMPORTANT QUESTIONS OF FEDERAL LAW WHICH HAVE NOT BEEN, BUT SHOULD BE SETTLED BY THIS COURT.

The Supreme Court of the United States has never decided the question as to whether petroleum placer mining claims on the petroleum oil and gas lands situated on the Outer Continental Shelf, initiated and maintained under the General Mining Laws of the United States as extended to the Outer Continental Shelf by the Outer Continental Shelf Lands Act (43 U.S.C. Section 1333 (a) (1)), are entitled to protection under the Constitution and Laws of the United States.

This is a case of first instance in the present action for which no precedent exists.

Another matter on which this Court has never passed, but should, is the



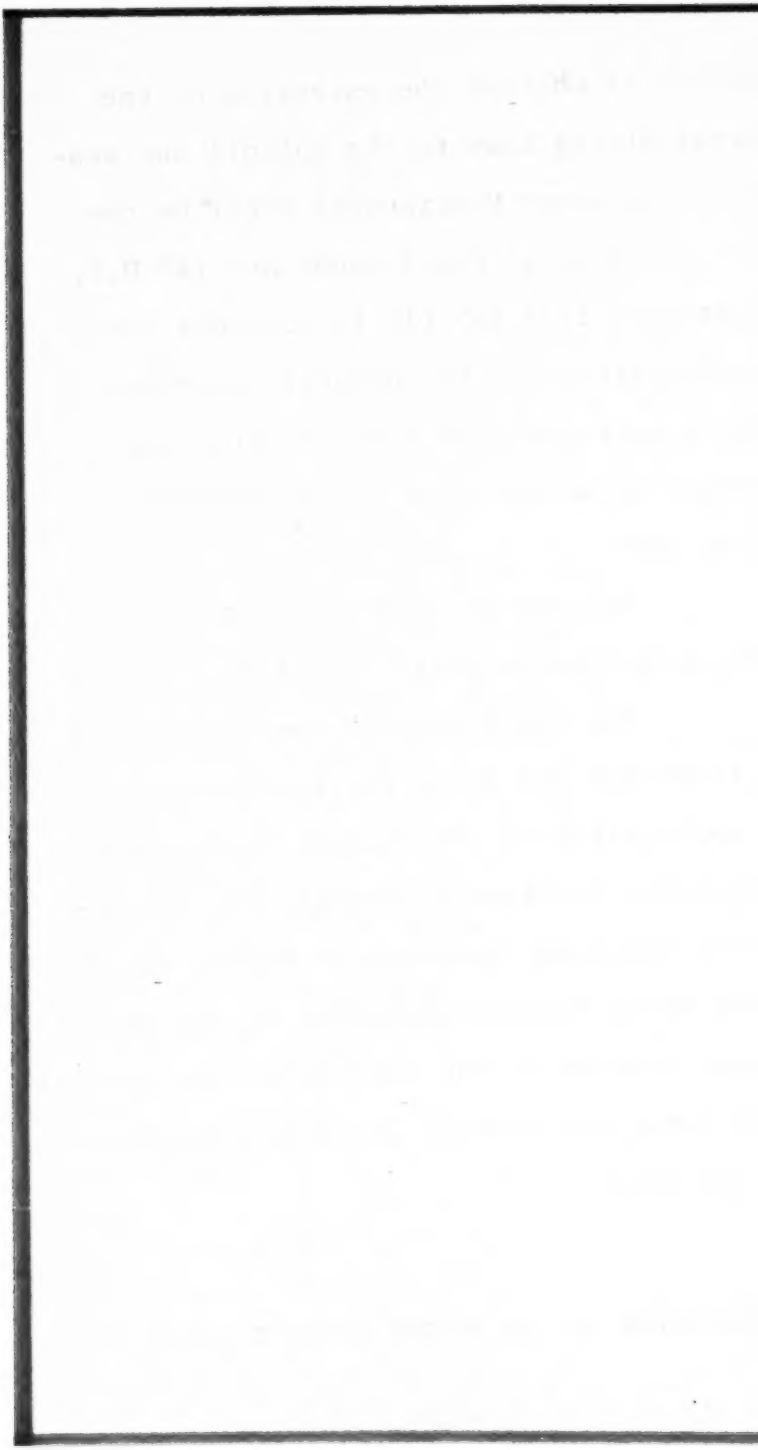
question of whether the extension of the General Mining Laws to the subsoil and seabed of the Outer Continental Shelf by the Outer Continental Shelf Lands Act (43 U.S. C., Section 1333 (a) (1)), provides for the disposition of the natural resources therein contained, by appropriation and segregation as provided by the General Mining Laws.

No case is ever likely to put these questions in purer form than this one.

The Ninth Circuit Court's opinion now rules out and voids the extension to and application of the General Mining Laws (30 U.S.C., Sections 1 through 172, inclusive) to the Outer Continental Shelf, which ruling is in direct opposition to the provisions enacted in the said Outer Continental Shelf Lands Act itself. (43 U.S.C. Sections 1333 et seq.)

IV

THE DECISION OF THE NINTH CIRCUIT COURT OF

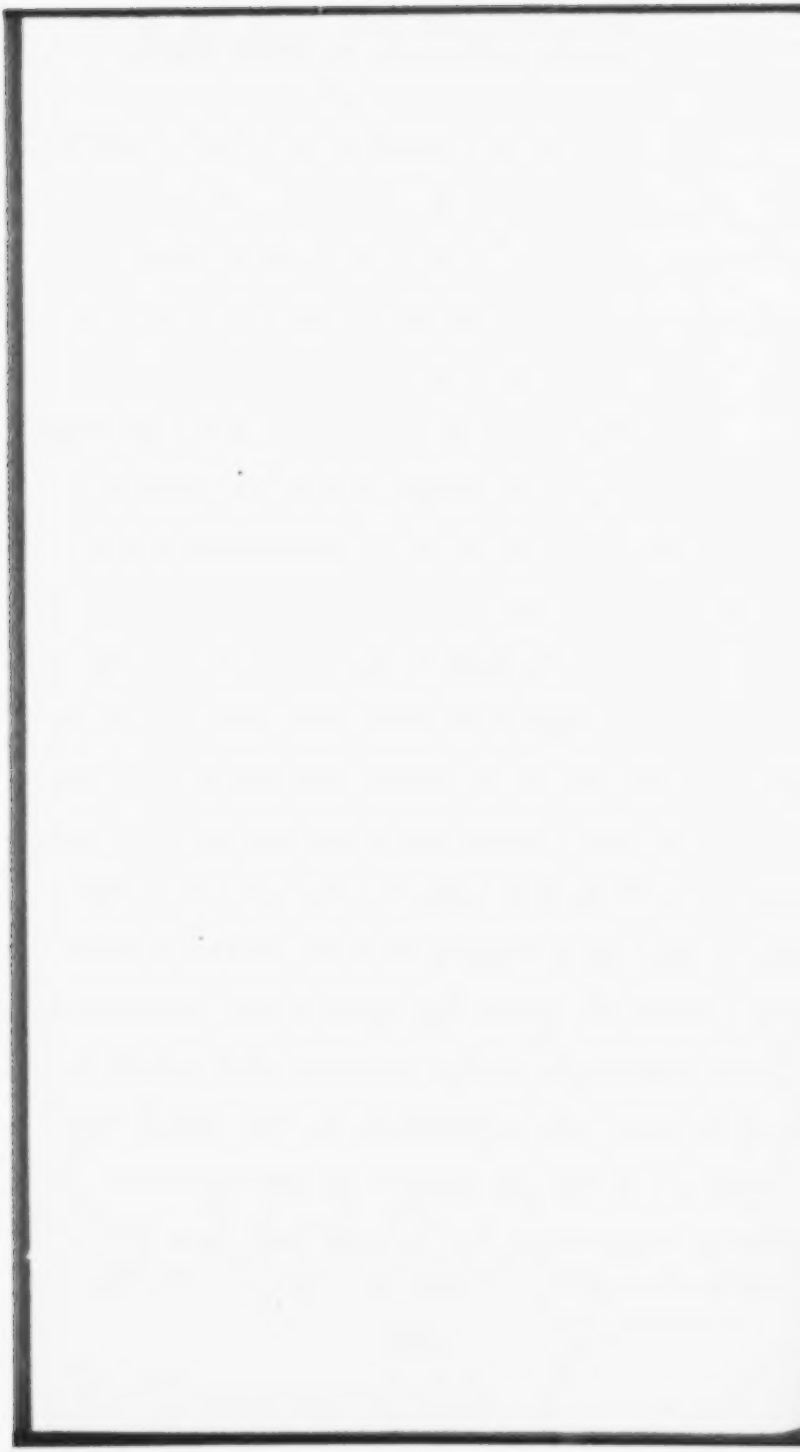


APPEALS CONFLICTS WITH THE APPLICABLE DECISIONS OF THIS COURT.

The Outer Continental Shelf Lands Act (43 U.S.C. Section 1333 (a) (1)), extended the laws of the United States, which included the General Mining Laws, to the Outer Continental Shelf.

The enactment of 43 U.S.C. Section 1400, defined and established the subsoil and seabed of the Outer Continental Shelf to be public land.

30 U.S.C. Section 22, reads: "Except as otherwise provided, all valuable mineral deposits in lands belonging to the United States, both surveyed and unsurveyed, shall be free and open to exploration and purchase, by citizens of the United States and those who have declared their intention to become such, under regulations prescribed by law, and according to the local customs or rules of miners in the several mining districts, so far as the same are applicable and not inconsistent with the



laws of the United States.

The "except as otherwise provided" clause in 30 U.S.C., Section 22, means "except as otherwise prescribed, expressed, stipulated or specifically stated." No "except as otherwise provided" conditions or qualifications of any kind whatsoever, are set forth in the Outer Continental Shelf Lands Act (43 U.S.C., Section 1331 et seq.), or any other Congressional Act, qualifying or conditioning the application of 30 U.S.C. Section 22, and its extension to the Outer Continental Shelf.

If Congress had intended that the disposition of the oil and gas resources on the Outer Continental Shelf should be only by Mineral Leases, Congress could have simply provided for the exception of the General Mining Laws from application to the Outer Continental Shelf, or Congress could have reserved all of the oil and gas resources on the Outer Continental Shelf to the United States. This Congress did not see

fit to do. (See also 43 U.S.C., Section 1341.)

The petroleum oil and gas lands on the Outer Continental Shelf embraced by Appellants' said petroleum placer mining locations were not withdrawn or closed to mineral entry by Congressional or Executive authority at the time Appellants made and recorded their said mining locations.

Under the section entitled "Laws Applicable to the Outer Continental Shelf" (43 U.S.C. Section 1333 (a) (1)), the Act clearly provides that the Constitution and Laws and civil and political jurisdiction of the United States, which includes all of the laws of the United States, and in particular the Mining Laws recited in 30 U.S.C. Sections 1 to 172 inclusive, entitled "Mineral Lands and Mining", are extended to the Outer Continental Shelf, with the one single provision "that mineral leases on the Outer Continental Shelf shall be maintained or issued only under the provisions of this

Act".

This provision for the maintainance or issuance of "Mineral Leases" on the Outer Continental Shelf only under the provisions of this Act, is the single provision, exception, and condition to the extension and application of Federal Laws to the Outer Continental Shelf.

This provision that "Mineral Leases on the Outer Continental Shelf shall be maintained or issued only under the provisions of this Act" clearly affirms the exclusion of the Outer Continental Shelf from the application and effect of the Mineral Leasing Act of 1920 (30 U.S.C. Sections 181 et seq., as amended August 8, 1946). This clearly did not, nor was it ever intended to apply to the Outer Continental Shelf, which is public land acquired by Congressional Act of August 7, 1953, and subsequent to February 25, 1920.

With exception of this provision

regarding the maintenance and issuance of mineral leases on the Outer Continental Shelf, the Outer Continental Shelf Lands Act places absolutely no other provisions, regulations of law, conditions, or restrictions upon the application of Federal Law to the Outer Continental Shelf and this interpretation is mandated by the language of the Outer Continental Shelf Lands Act as enacted by Congress.

In addition to disposition of the mineral resources on the Outer Continental Shelf under the General Mining Laws, Congress provided that the Secretary is authorized to grant and issue mineral leases for disposition of oil and gas resources after first complying with the provisions for leasing set forth in the Act. (43 U.S.C. Section 1337)

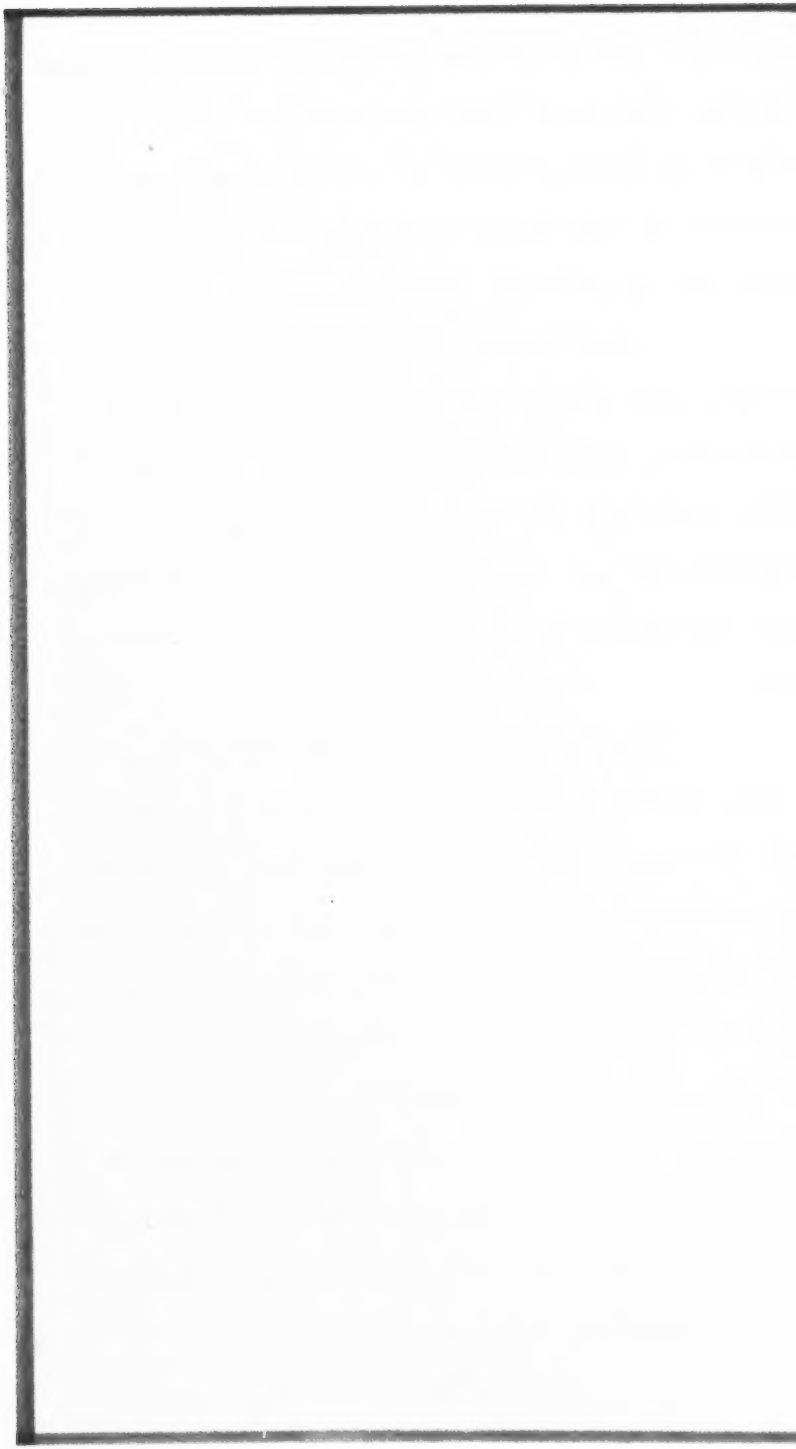
It is provided in 43 U.S.C., Section 1333 (a) (1), that <u>such mineral leases</u> shall be maintained or issued <u>only</u> under the provisions of this Act.

At no place in the Act does it provide or indicate that the one and only method of disposition of the mineral resources on the Outer Continental Shelf shall be by mineral leasing.

Appellants have made, filed, recorded, and perfected their subject mining locations, and have conformed their mineral entry with all of the applicable acts of Congress as set forth in the General Mining Laws including Annual Labor and Improvement Work.

The definition of "mineral lease" as set forth in 43 U.S.C. Section 1331 (c) does not apply to mining locations provided for under Congressional Law and for which no form of authorization by the Secretary is required.

Appellants' petroleum placer mining locations were made and recorded in conformity with the provisions of 30 U.S.C. Section 22, and all other applicable regulations prescribed by law.



Under Act February 11, 1897, c 216, 29 Stat. 526, the location and sale of oil and gas lands was governed by Chapter 2 of Tit. 30 U.S.C., applicable to the location and sale of placer mining claims. This interpretation was held by the Court in New England & Coalinga Oil Co. v. Congdon, 1907, 92 P. 180, 152 Cal. 211; et al.

In U.S. v. McCutchen, D.C. Cal. 1916, 238, F. 575, the Court held:

"By Act of February 11, 1897, c 216, 29 Stat. 526, Congress intentionally limited the right of entry upon, and the location of, oil lands, to such lands as were 'chiefly valuable therefor,' i.e. lands chiefly valuable for oil, and the government as sovereign proprietor, could say what lands, if any, might be entered and located as for petroleum."

"Congress could if it saw fit deny the right to enter upon any such lands, and for the same reason could limit the lands

upon which entry might lawfully be made, . . . ".

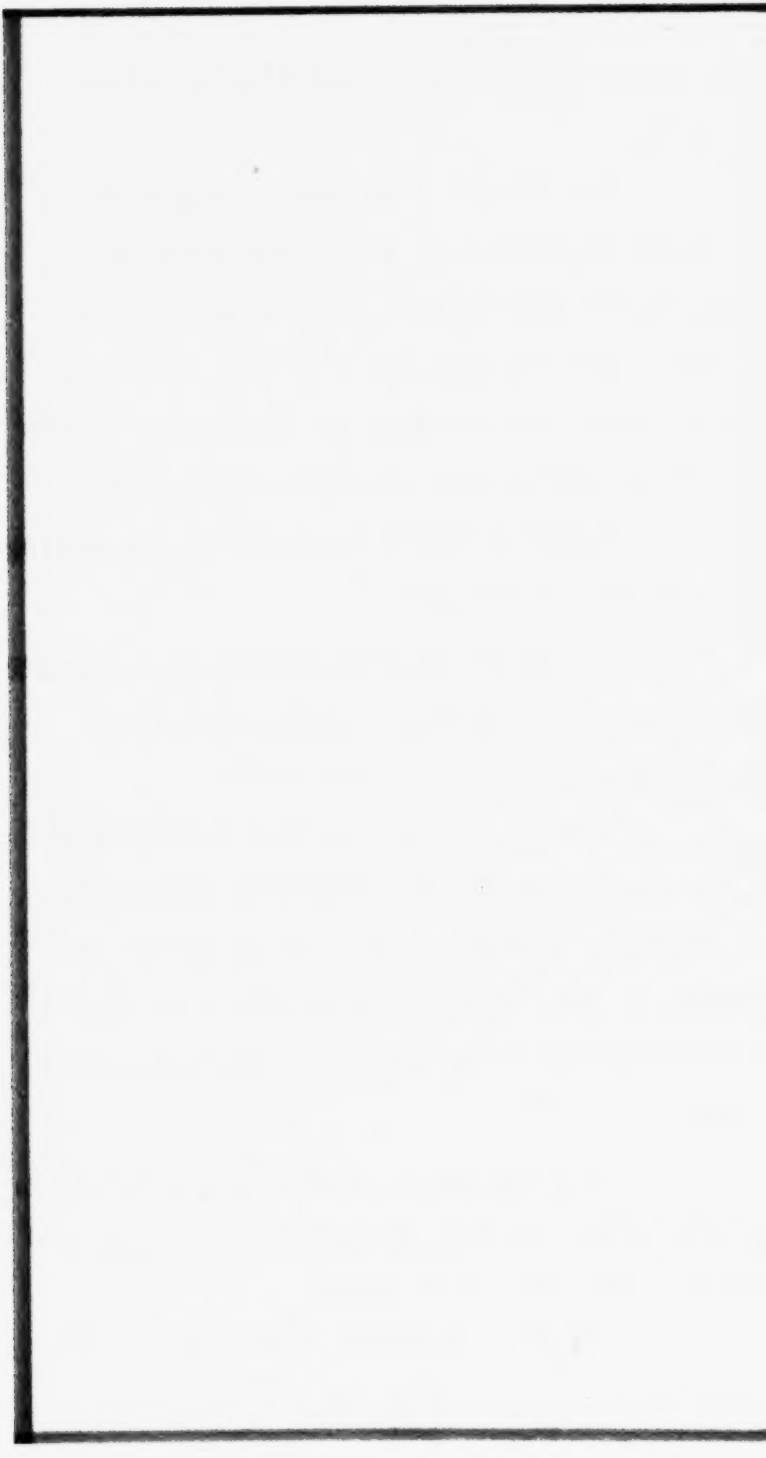
We submit that that portion of the Outer Continental Shelf embraced by Appellants' said mining claims is chiefly valuable for oil and gas and that Congress has not seen fit to deny or limit such lands to mineral entry and location under the Outer Continental Shelf Lands Act, the Mining Laws, or any other act.

In Ranchers Exploration and Development Co. v. Anaconda Co., D.C. Utah 1965, 248 F.Supp. 708; the Court held:

"It is the policy and requirement of law that, except as otherwise provided, all valuable mineral deposits in lands belonging to the United States shall be open to exploration under regulations prescribed by law, . . . ".

In O'Reilly v. Campbell, Utah 1886, 6 S.Ct. 421, 116 U.S. 418, 29 L.Ed. 669, and many others, the Court held:

"By this section (Section 22, 30



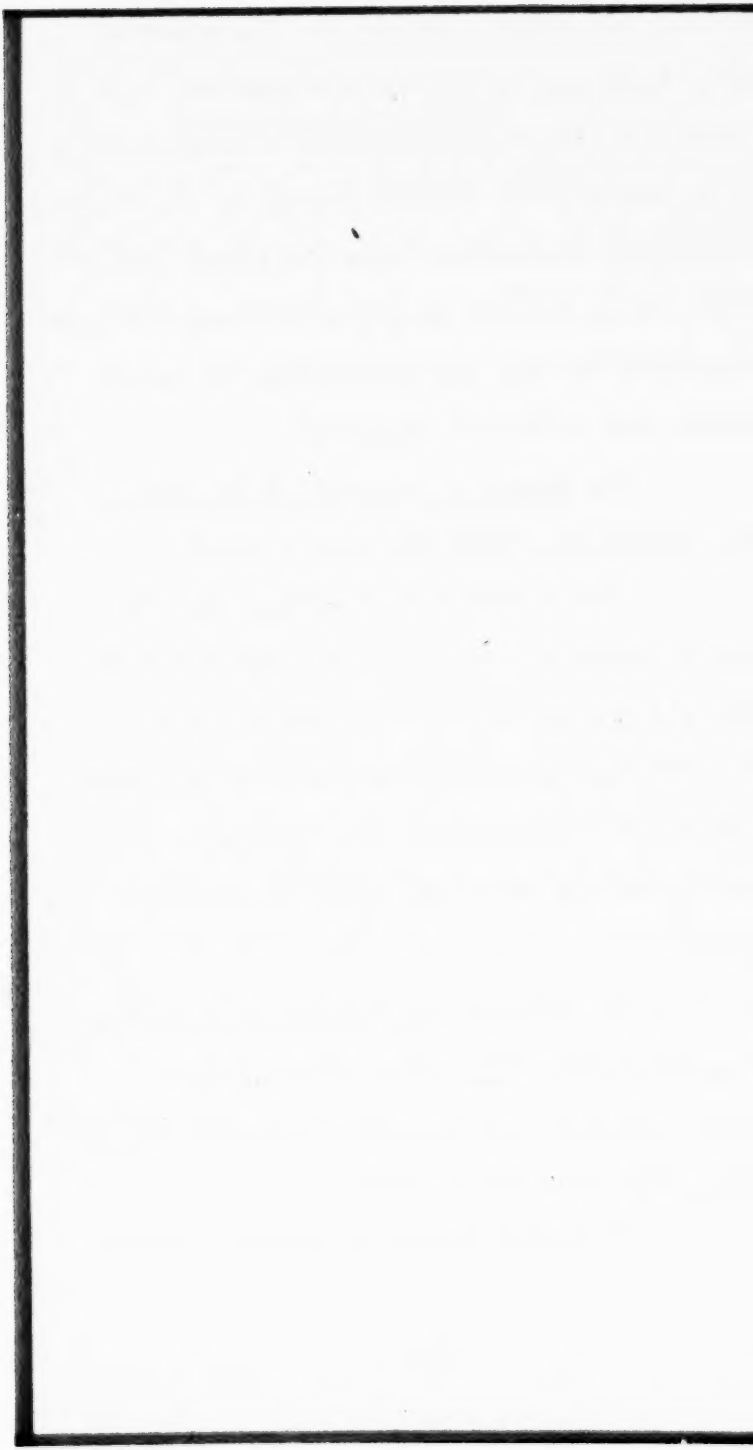
U.S.C.), all minerals and public mineral lands, both surveyed and unsurveyed, are declared to be free and open to exploration and occupation by all citizens of the United States, and those who have declared their intention to become such, under regulations prescribed by law and according to local customs and rules of miners."

In Davis v. Nelson, C.A. Cal., 1964, 329 F.2d. 840; the Court held;

"This section (Section 22, 30 U.S.C.), grants right to explore and purchase all valuable mineral deposits in lands belonging to the United States, and the right to occupation and purchase of lands in which valuable mineral deposits are found".

In McKenna v. Wallis, C.A. La., 1964, 344 F.2d. 432, vacated on other grounds, 86 S.Ct. 1301, 384 U.S. 63, 16 L. Ed.2d. 369; the Court held:

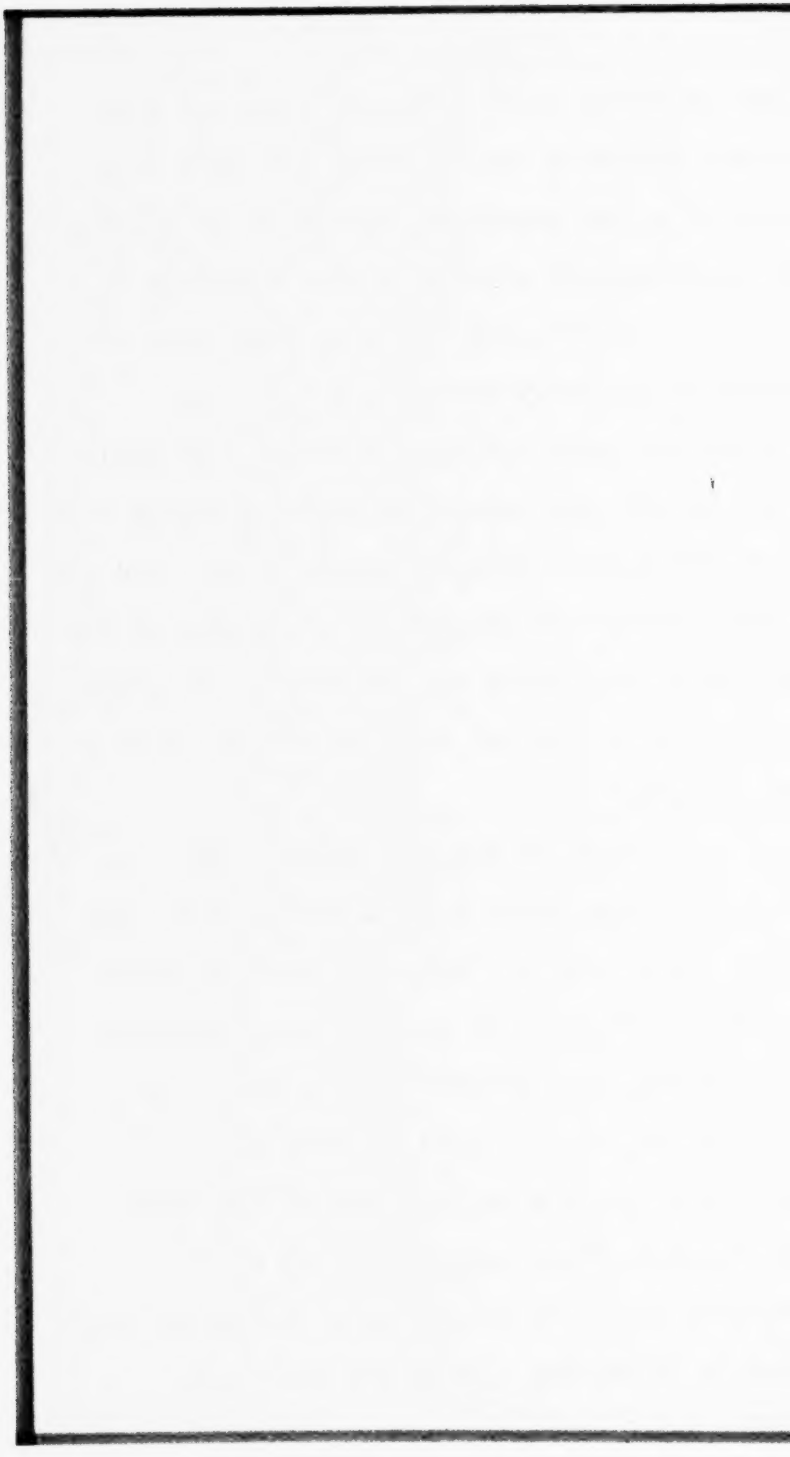
"Mineral lease of public domain



land from the United States does not give Lessee anything approaching the full ownership of a fee patentee, nor does it convey an unencumbered estate in the minerals."

Appellants' mining locations are superior to Government issued mineral leases and such mining locations appropriate the oil and gas resources and segregate them from the public domain, while an oil and gas lease conveys no unencumbered estate in the minerals, and gives to the Lessee no title or estate in the oil and gas deposits in the ground.

With 30 U.S.C., Section 22, extended to the Outer Continental Shelf, and since there are no "unless otherwise provided" provisions or conditions governing or limiting its application to the Outer Continental Shelf, said Section 22 preempts the leasing provisions of the Outer Continental Shelf Lands Act (43 U.S.C., Sections 1331, et seq), by securing to the locator of mining claims on the Outer



Continental Shelf, initiated under the statutory provisions of said Section 22, the right of priority and preference in the appropriation, segregation, title and ownership to the oil and gas deposits therein contained.

The Ninth Circuit Court's decision in this case, holding that the oil and gas deposits in lands belonging to the United States and situated on the Outer Continental Shelf are not subject to appropriation and segregation under the General Mining Laws is in conflict with this Court's ruling that valuable mineral deposits in all public lands belonging to the United States are free and open to mineral entry unless otherwise specifically provided: there were none.

See Rancher's Exploration and Development Co. v. Anaconda Co.; O'Reilly v. Campbell; and David v. Nelson; Coleman v. U.S.; hereinabove cited.

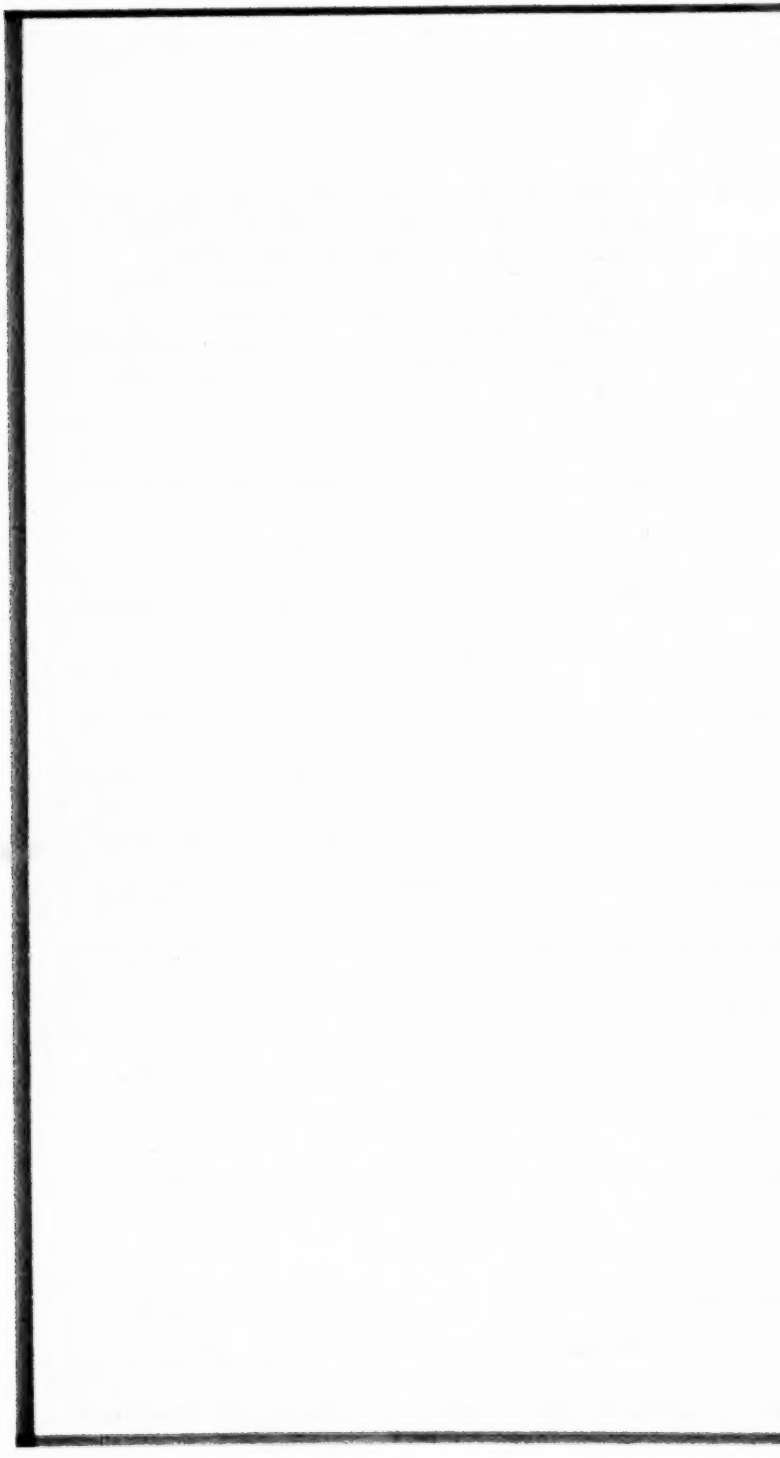
V

THE NINTH CIRCUIT COURT OF APPEALS HAS SO FAR DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS, AND HAS SANCTIONED SUCH A DEPARTURE BY A DISTRICT COURT, AS TO CALL FOR AN EXERCISE OF THIS COURT'S POWER OF SUPERVISION.

The United States District Court for the Central District of California found and the Ninth Circuit Court of Appeals affirmed, that mining claims could not be initiated under the General Mining Laws, on the Outer Continental Shelf, and that, therefore, Plaintiffs' Complaint did not allege a valid claim to any interest in the subsoil and seabed of the Outer Continental Shelf belonging to the United States.

In arriving at their decisions, both the District Court and the Ninth Circuit Court of Appeals relied substantially upon the findings in the case of Oklahoma v. Texas, 258, U.S. 574, (1921).

We submit that the case of Oklahoma v. Texas involved the issue of whether

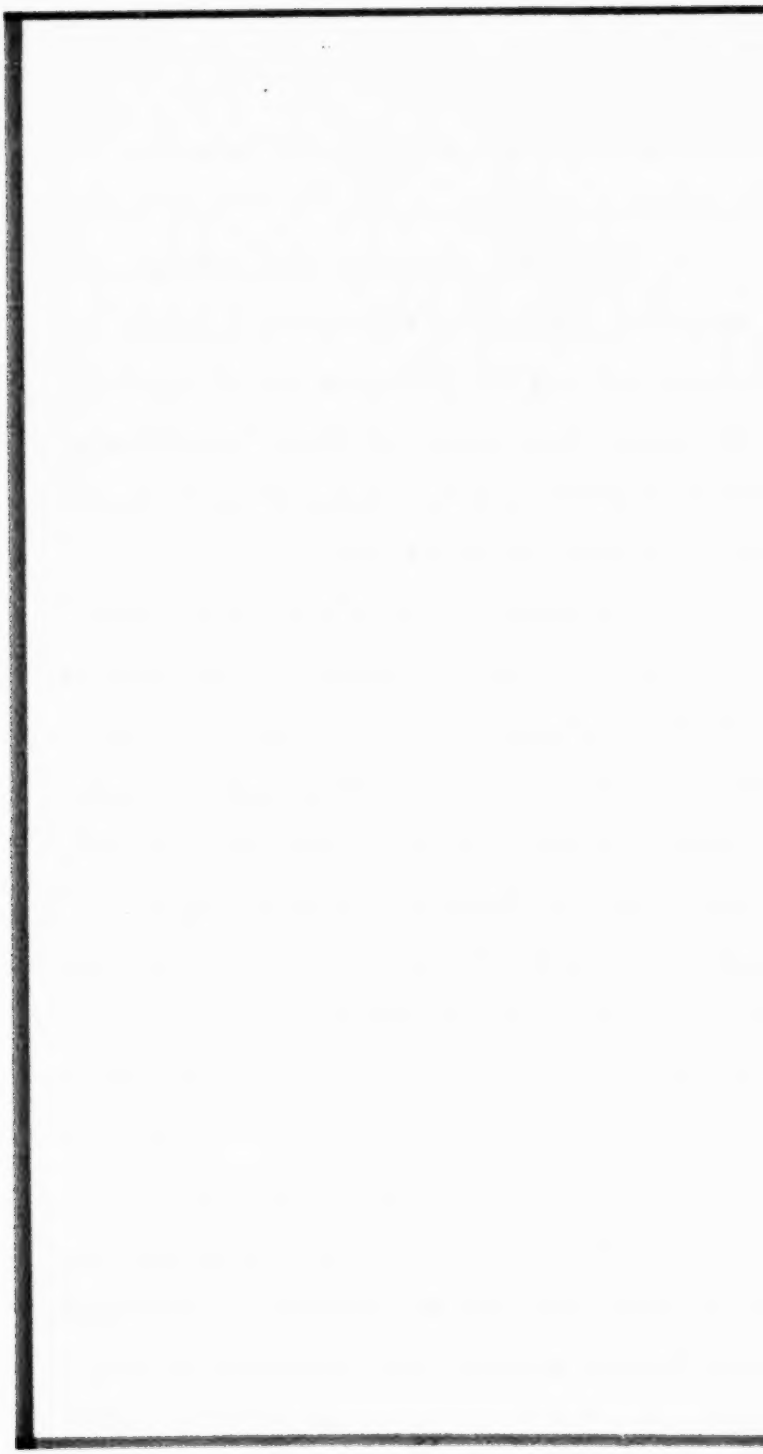


certain mining claims filed in Oklahoma were valid.

In 1891, Congress adopted an Act, in which it expressly stated "all lands in Oklahoma are hereby declared to be agricultural lands, and proof of their non-mineral character shall not be required as a condition precedent to final entry".

We submit that there is no similarity and nothing in common in the case at bar with Oklahoma v. Texas, and that the Court's findings in said Oklahoma v. Texas are wholly inapplicable to the case at bar. In applying the findings in Oklahoma v. Texas to the case at bar, both the District Court and the Ninth Circuit Court have encroached unconstitutionally upon the mandate of an Congressional Statute as expressed in the Outer Continental Shelf Lands Act.

Appellants' mining claims are on public land, mineral in character, belonging to the United States, and situated on the



Outer Continental Shelf. They were initiated and perfected under the General Mining Laws subsequent to their extention and application by Congress to the Outer Continental Shelf by the Outer Continental Shelf Lands Act. (43 U.S.C., Section 1333 (a) (1)).

SUMMARY OF ARGUMENT

I

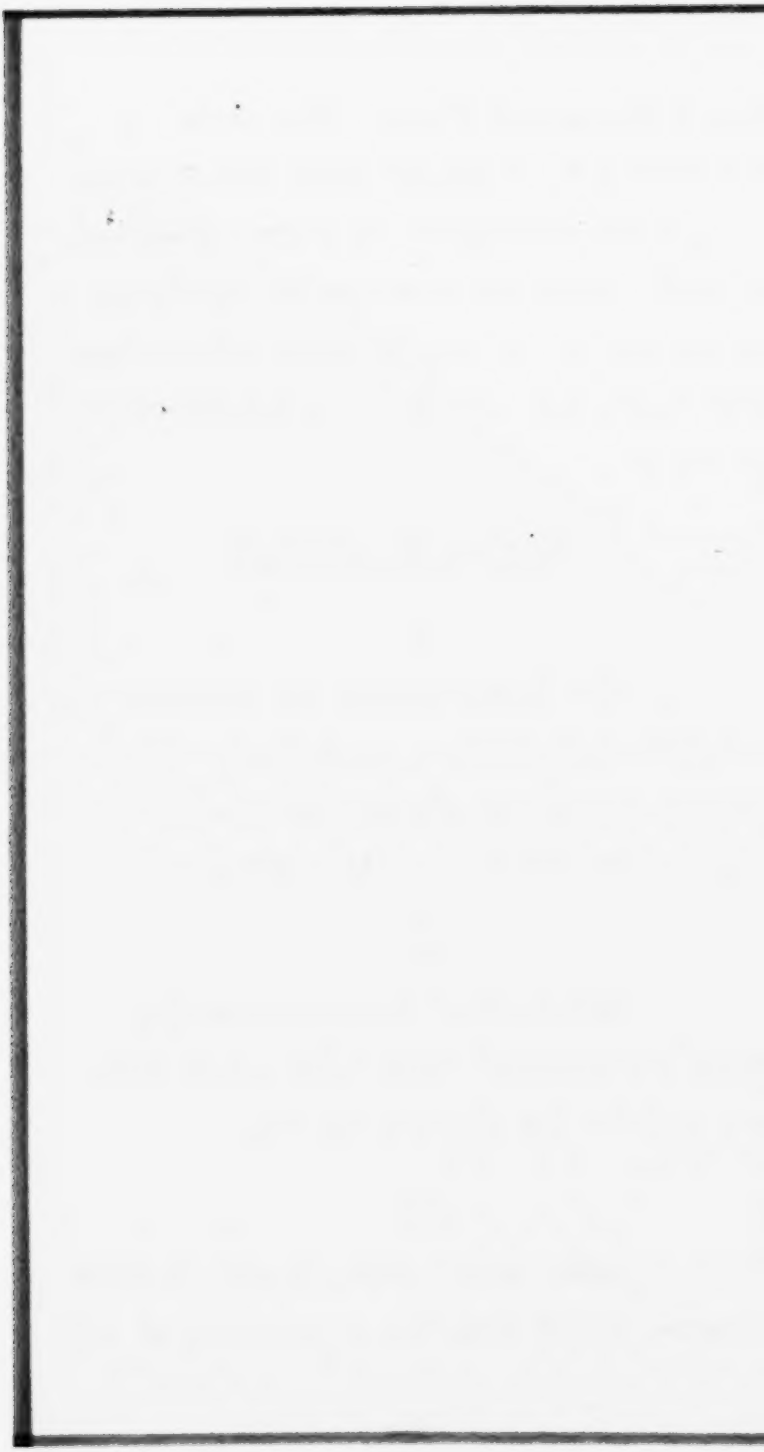
The Secretary of the Interior has exclusive jurisdiction to determine the validity of mining claims, not the District Court or the Ninth Circuit Court.

II

Appellants' perfected mining claims and minerals have been taken from then without due process or law.

III

Appellants' case is one of first instance, which requires a decision as to



the validity of prior and existing mining claims of the Outer Continental Shelf.

IV

The decision of the Ninth Circuit Court is directly in conflict with the provisions of the Outer Continental Shelf Lands Act, and applicable decisions of the United States Supreme Court, and other Federal courts.

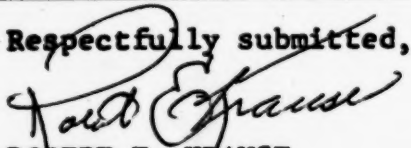
V

Appellants' decision requires the supervision of this Court to be consistent with the application of existing Federal statutes and cases.

CONCLUSION

Petitioners herein have never had a review of the points raised by them on this Appeal, and they are entitled to their day in Court. A Writ of Certiorari should issue on all questions herein raised in order that this may be done.

Respectfully submitted,



ROBERT E. KRAUSE

Of Counsel.

WILLIAM C. BABCOCK

100 East Ocean Boulevard
Long Beach, California 90802

APPENDIX A

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

D. ARTHUR LOWE, THELMA G. LOWE, DAVID A. LOWE, and STELLA FERN LOWE,

APPELLANTS,

vs.

UNION OIL COMPANY OF CALIFORNIA, a corporation; GULF OIL CORPORATION, a corporation; MOBIL OIL CORPORATION, a corporation; TEXACO, INC., a corporation; and UNITED STATES DEPARTMENT OF THE INTERIOR,

APPELLEES.

Appeal from the United States District Court for the Central District of California.

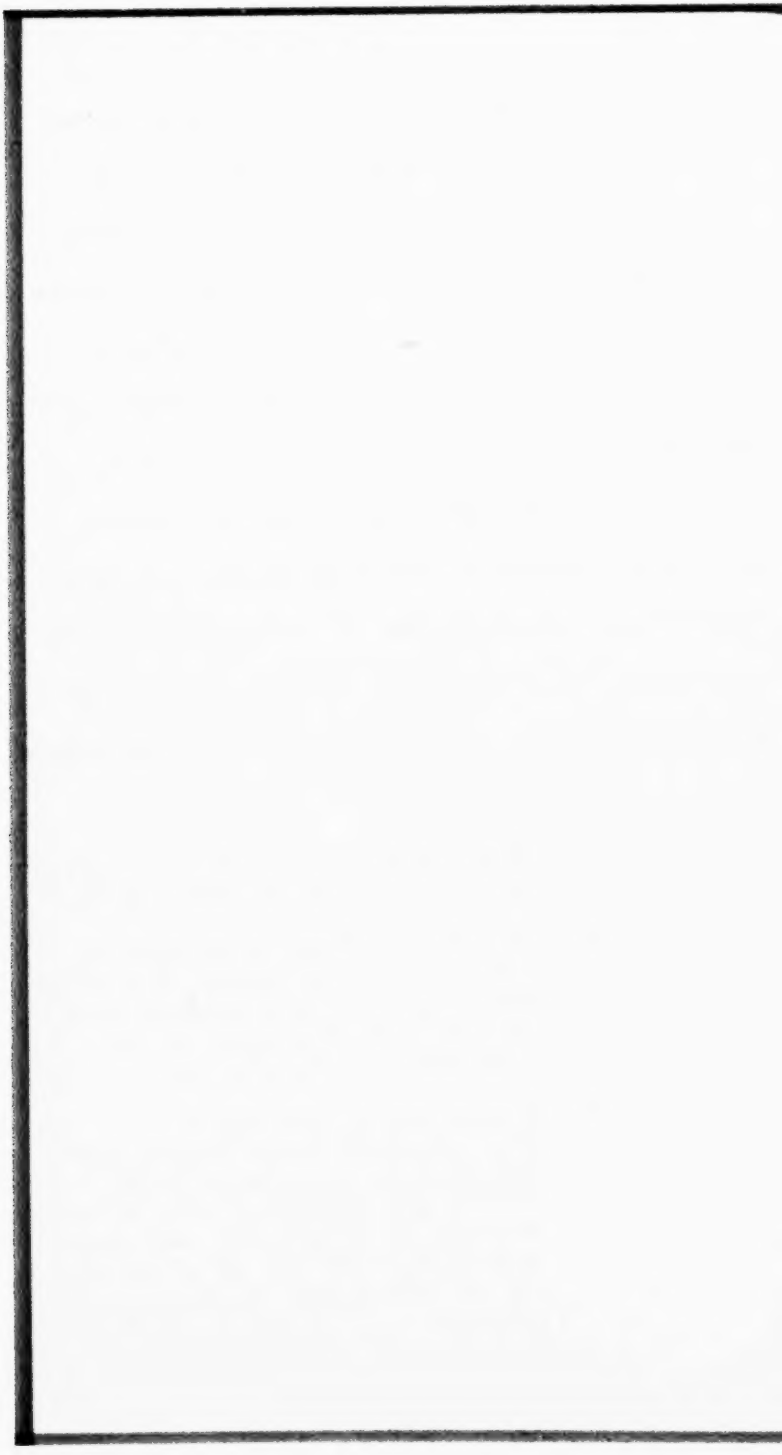
Defendants' motion to dismiss the within action came on regularly for hearing on November 30, 1971, at 1:30 o'clock P.M. before the Honorable Ray McNichols, Judge presiding. Robert E. Krause appeared on behalf of Plaintiffs,

O'Melveny & Myers by Allyn O. Kreps appeared on behalf of Defendants Union Oil Company of California, Mobil Oil Corporation and Gulf Oil Corporation, B. J. Roose appeared on behalf of Defendant Texaco, Inc., and the Defendant United States of America appeared by Thomas L. McKevitt, Attorney, Department of Justice. Based upon the complaint and the first amended complaint, the motions to dismiss and the memoranda in support of and in opposition to said motions to dismiss, the Court finds that:

1. The General Mining Laws never applied to submerged lands.

2. The Mineral Leasing Act of 1920 (41 Stat. 437, 30 U.S.C. Section 193) superseded the General Mining Laws with respect to oil and gas.

3. Since 1953, the Outer Continental Shelf Lands Act (43 U.S.C. Sections 1334, 1337) has provided the sole method by which oil and gas resources are to be disposed of on the Outer Continental Shelf.



4. The United States of America (sued herein as the United States, Department of the Interior) is an indispensable party to the within action, and has not consented to be sued herein.

5. The United States, Department of the Interior, is not a suable entity.

Based upon that certain "Order Granting Defendants' Motion to Dismiss for Failure to State a Claim Upon Which Relief Can be Granted and for Failure to Join an Indispensable Party", and judgment dismissing the action entered in this Court by the Honorable Albert Lee Stephens, Jr., Judge, on December 17, 1969, in the case of Ratner v. Union Oil Company of California, et al, Civil No. 69-1538-ALS, and that certain "Order" of the United States Court of Appeals for the Ninth Circuit, filed on September 14, 1971, in case No. 25427, affirming the aforesaid order and judgment dismissing said action, the Court further

finds that:

1. The General Mining Laws never applied to submerged lands.

2. The Mineral Leasing Act of 1920 (41 Stat. 437, 30 U.S.C. Section 193) superseded the General Mining Laws with respect to oil and gas.

3. Since 1953, the Outer Continental Shelf Lands Act (43 U.S.C. Section 1334, 1337) has provided the sole method by which oil and gas resources are to be disposed of on the Outer Continental Shelf.

4. The United States of America is an indispensable party to the within action.

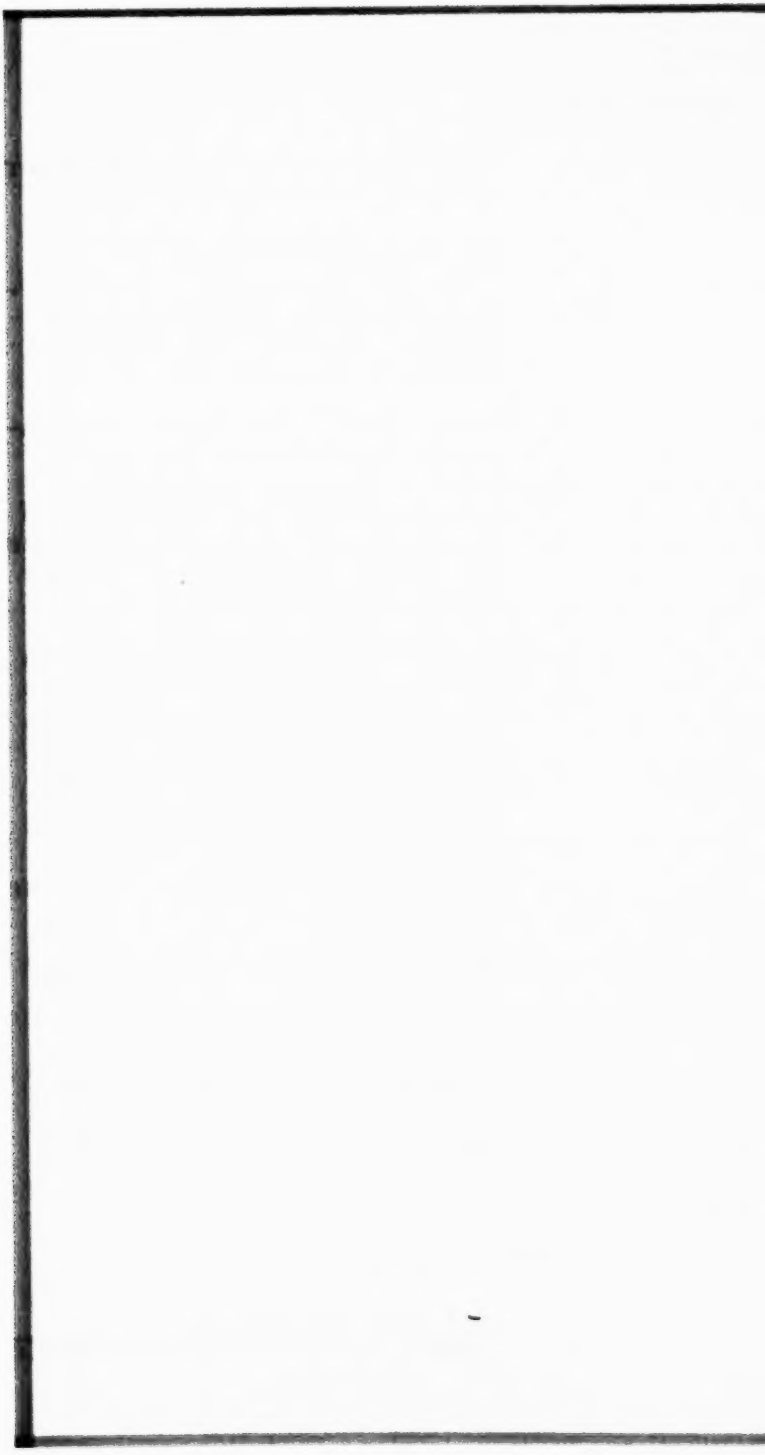
5. This Court appears bound by the aforesaid Order in case No. 25427 (now final) affirming the order and judgment dismissing the action in case No. 69-1538-ALS.

NOW, THEREFORE, the Court being fully advised in the premises;

IT IS ORDERED that defendants' motion to dismiss the within action are granted.

DATED: January 6, 1972.

/s/ Ray McNichols
Judge, United States District Court



APPENDIX B

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

D. ARTHUR LOWE, THELMA G. LOWE, DAVID A. LOWE, and STELLA FERN LOWE,
Appellants,

vs.

UNION OIL COMPANY OF CALIFORNIA, a corporation; GULF OIL CORPORATION, a corporation; MOBIL OIL CORPORATION, a corporation; TEXACO, INC., a corporation; and UNITED STATES, DEPARTMENT OF THE INTERIOR,
Appellees.

No. 72-1538

[November 15, 1973]

Appeal from the United States District Court
for the Central District of California

Before: WRIGHT and GOODWIN, Circuit Judges, and EAST,* District Judge.

GOODWIN, Circuit Judge:

This appeal challenges the government's ownership of the fossil fuel deposits underlying the Outer Continental Shelf off the California coast.

Appellants sued the United States (Department of the Interior) and the four corporate appellees to quiet title, and demanded damages for trespass and conversion, for waste of private oil and gas resources, and for devaluation of mining locations.

Appellants base their claims upon their filing, in early 1968, of forty-one placer mining locations situated in Tract 402, Block

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*The Honorable William G. East, Senior United States District Judge for the District of Oregon, sitting by designation.

31, North, 65 West, as shown on the Official Outer Continental Shelf Leasing Map 68, of the Channel Islands Area. The district court dismissed the action, ruling that the complaint did not, either in its original or in its amended form, allege a valid claim to any interest in the subsoil or seabed of the Outer Continental Shelf of the United States.

The district court held that:

1. The General Mining Laws never applied to submerged lands.
2. The Mineral Leasing Act of 1920 (41 Stat. 437, 30 U.S.C. § 193) superseded the General Mining Laws with respect to oil and gas.
3. Since 1953, the Outer Continental Shelf Lands Act (43 U.S.C. §§ 1331 et seq.) has provided the sole method by which oil and gas resources are to be disposed of on the Outer Continental Shelf.
4. The United States of America (sued herein as the United States, Department of the Interior) is an indispensable party to the action, and has not consented to be sued herein.
5. The United States, Department of the Interior, is not a suable entity.

Because we dispose of this case on the district court's third ground, we do not reach the other issues.

Jurisdiction is founded on 28 U.S.C. § 1291 and 28 U.S.C. § 1346(f).[1] Governmental consent to suit is based upon 28 U.S.C. § 2409a(a).[2] For the purposes of this case we will accept the appellants' theory that the twelve-year statute of limitation[3] did

[1] "The district courts shall have exclusive original jurisdiction of civil actions under section 2409a to quiet title to an estate or interest in real property in which an interest is claimed by the United States." 28 U.S.C. § 1346(f) (Supp. 1972).

[2] "The United States may be named as a party defendant in a civil action under this section to adjudicate a disputed title to real property in which the United States claims an interest, other than a security interest or water rights • • •," 28 U.S.C. §2409a(a) (Supp. 1972).

[3] "Any civil action under this section shall be barred unless it is commenced within twelve years of the date upon which it accrued. Such action shall be deemed to have accrued on the date the plaintiff or his predecessor in interest knew or should have known of the claim of the United States." 28 U.S.C. § 2409a(f) (Supp. 1972).

not start running until they filed their so-called locations in 1968. Therefore, we need not decide whether the appellants' attempt to dismiss the United States from the suit was successful,[4] or alternatively whether the United States would be an indispensable party.

Appellants allege that their placer mining locations were filed pursuant to the General Mining Laws. The General Mining Laws, enacted in 1872 and substantially unchanged to the present, provide, in part:

> "Except as otherwise provided, all valuable mineral deposits in lands belonging to the United States, both surveyed and unsurveyed, shall be free and open to exploration and purchase • • •." 30 U.S.C. § 22.

The Supreme Court has held that the "except as otherwise provided" clause is satisfied when there is another, more specific, statute which provides for the disposition of certain lands and the mineral deposits thereon. In *Oklahoma v. Texas*, 258 U.S. 574 (1921), the Court held:

> " • • • Only where the United States has indicated that the lands are held for disposal under the land laws does the section apply; and it never applies where the United States directs that the disposal be only under other laws." 258 U.S. at 600.

It is obvious that the United States has "otherwise provided" in connection with the Outer Continental Shelf. In 1953, Congress enacted the Outer Continental Shelf Lands Act, 43 U.S.C. § 1331 et seq. That act, *inter alia*, asserted United States' ownership of and jurisdiction over minerals in and under the Outer Conti-

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[4]Plaintiffs' original complaint was filed on February 2, 1971. By Stipulation dated March 15, 1971, plaintiffs were allowed to amend their complaint. On March 19, 1971, the United States moved to dismiss the cause of action and for summary judgment in response to the plaintiffs' original complaint. On March 24, 1971, the district court ordered plaintiffs' amended complaint to be filed retroactively as of March 15, 1971. On March 30, 1971, plaintiffs filed notices of dismissal as to the United States, Department of Interior. Subsequently the United States and all other defendants filed motions to dismiss the cause of action with prejudice or for summary judgment in answer to the plaintiffs' first amended complaint.

nental Shelf, extended the Constitution and laws of the United States to the shelf lands, and established an exclusive system of mineral leasing on the Outer Continental Shelf. The purpose of the Lands Act was to define a body of law applicable to the seabed of, subsoil of, and fixed structures on the Outer Continental Shelf. *Rodrigue v. Aetna Casualty & Surety Co.*, 395 U.S. 352 (1969).

The Lands Act specifically provided that "mineral leases on the outer Continental Shelf shall be maintained or issued only under the provisions of this subchapter." 43 U.S.C. § 1333(a)(1). Section 1331(c) defines the term "mineral lease" as "any form of authorization for the exploration for, or development or removal of deposits of, oil, gas, or other minerals • • •." Furthermore, § 1337 established a detailed bidding procedure pursuant to which the Secretary of the interior may grant leases. In light of these clear expressions of a congressional intent to provide an exclusive procedure for acquiring mineral interests in the Outer Continental Shelf, we hold that appellants' claims based upon their purported placer mining locations filed under the General Mining Laws are invalid.

Accordingly, the district court's dismissal of the complaint is affirmed.

PERNAU-WALSH PRINTING CO., SAN FRANCISCO 11-19-73—480

AFFIDAVIT OF SERVICE BY MAIL

State of California)
) ss.
County of Los Angeles)

The undersigned, being first duly sworn, states: My business address is 100 East Ocean Boulevard, 910 Jergins Trust Building, Long Beach, California 90802. That I am a citizen of the United States, and over the age of 18 years employed in the County of Los Angeles, California, and not a party to this cause; on the 22 day of March, 1974, I served the within Appellants' Brief upon the persons named below by depositing two true copies thereof enclosed in a sealed envelope with postage thereon fully prepaid, in a mail box, sub-post office, substation, or mail chute (or other like facility) regularly maintained by the Government of the United States at 100 East Ocean Boulevard, in the City of Long Beach, California, addressed to the attor-

neys of record for said Appellees at the office address of said attorneys, as follows:

Rashkow, Robert L. Meyer & Frederick Brosio, Esquire
United States Courthouse
312 North Spring Street
Los Angeles, California 90012

B. J. Roose, Miles W. Newby, Jr., Esquire
3350 Wilshire Boulevard
Los Angeles, California 90010

Edward F. Bradley, Jr., Esquire
Assistant Attorney General
Department of Justice
Washington, D. C. 20530

O'Melveny & Myers, Esquire
611 West Sixth Street
Los Angeles, California 90017

Richard W. Curtis and Donald R. Arnett, Esquire
1801 Avenue of the Stars
Los Angeles, California

Mr. George S. Schwartz
Marine Research Section
Justice Department
Washington, D. C. 20530

Linda S. Niswonger
LINDA S. NISWONGER

Subscribed and sworn to before me this 22 day of March, 1974.

Allen R. Steele
ALLEN R. STEELE

OFFICIAL SEAL
ALLEN R. STEELE
Notary Public - California
PRINCIPAL OFFICE IN
LOS ANGELES COUNTY
MY COMMISSION EXPIRES OCT. 6, 1974